ALLAN CHRISTELOW

Muslim Law Courts and the French Colonial State in Algeria

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By ALLAN CHRISTELOW

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To Lena, for believing

PREFACE

The origins of this study go back to the early 1970s, when I taught at Mubarik al-Mili Secondary School, in Annaba, Algeria. Teaching there gave me a firsthand experience in the problems of recovering and revitalizing national values, after what surely ranks as one of the most intensive and violent colonial experiences of modern times. As I began my graduate study, it became clear to me that the Muslim courts were crucial to understanding the impact of the colonial experience on Algerian cultural values. And as I pursued my research, it became clear that the impact was a complex one.

Along the way, quite a few people have helped me to understand the complexities. My adviser at the University of Michigan, Professor Richard Mitchell, was a constant source of encouragement, and a source of sensitive insights on the dilemmas of Islam in the modern world. His death, in September 1983, brought great sadness to me, as a student and a friend. In Paris, Professor Charles-Robert Ageron offered me warm hospitality, and shared his unflagging enthusiasm for historical research. In Algiers, Professor Bilqasim Sa'adallah helped me to understand questions from an Algerian perspective, and stimulated my interest in intellectual history.

I also owe a good deal to conversations with Mahfoud Smati, now of the Centre de Recherche sur l'Archéologie, la Préhistoire et l'Ethnologie in Algiers; Mustafa Haddad of the University of Constantine; Jean-Claude Vatin of the C.R.E.S.M. in Aix-en-Provence, France, and, presently or formerly associated with the Center for Near East and North African Studies of the University of Michigan; William Schorger; Clement Henry; Amal Rassam; Wil Rollman; Susan Miller; and Emily Byrd. Also at Michigan, Professors Charles Tilly and Raymond Grew contributed to my formation as a social historian.

I am indebted to the directors and staffs of the following archives and libraries for their help: the Archives d'Outre-Mer and the C.R.E.S.M. in Aix-en-Provence; the Bibliothèque Nationale, the Bibliothèque de l'Arsénal, the Archives Nationales, and the Archives of the Ministries of War and Foreign Affairs in Paris; the Bibliothèque Nationale and the Archives Nationales in Algiers; the Ar-

chives de la Wilaya in Constantine; the Archives Nationales and the Bibliothèque Nationale in Tunis.

The original research for this study was carried out in 1975-1976, with the aid of a fellowship and travel grant from the Center for Near East and North African Studies of the University of Michigan. The results appeared in a dissertation which I defended in October 1977. Since then, I have done additional research in the archives at Aix-en-Provence, and in the quite extraordinary collection of works on North Africa in the library of Bayero University, Kano, Nigeria. This book contains very substantial revisions, and an additional chapter.

Portions of Chapter 2 appeared as "Saintly Descent and Worldly Affairs in Mid-Nineteenth Century Mascara, Algeria," in *International Journal of Middle East Studies*, 12 (1980), pp. 139-155; a large portion of Chapter 5 appeared as "An Inquiry into the Origins of the Algerian Medjlis Crisis of 1858," in *Revue d'historie maghrébine*, 6 (1979), pp. 35-51; and Section 2 of Chapter 7 appeared as "Career Patterns of Late Nineteenth Century Algerian Muslim Magistrates," in *The Maghreb Review*, 6 (1981), pp. 36-39. I would like to thank the editors of these journals for permission to republish this material. I would also like to thank Jeanne Dunn for preparing the map.

Finally, I wish to express my thanks to the students with whom I have worked, in both Algeria and Nigeria. I learned from them that understanding Muslim society requires that one understand distinct individuals within the society, not making them heroes, but granting them the dignity of historical responsibility.

2 January 1984

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TRANSCRIPTION OF ARABIC

Arabic *words* have been transcribed according to a simplified Library of Congress system, with no distinction between long and short vowels, no dipthong marks, and hamza not transcribed.

In the spelling of *names*, I have tried to take account of several considerations: consistency, fidelity to pronunciation, and usefulness to researchers, who will be most likely to encounter names in a rather idiosyncratic French transcription, or else in the Arabic. Place names have fairly standard French transcriptions, so I have stuck with these. Names of people, except for the best-known ones, tend to vary in their French transcription, and so with these I stay closer to the Library of Congress system, though I use "e" for the short "i," as in the ubiquitous "Ben." For some of the more important names, I provide alternative spellings in the index.

For those who might refer to a recently published atlas, or carry this book on a road trip through Algeria, they will find the following name changes:

Old Name	*New Name*
Algiers	El-Djezair
Aumale	Sour el-Ghozlane
Bône	Annaba
Bougie	Bejaia
Constantine	Qsontina
Oran	Wahran
Orléansville	El-Asnam
Philippeville	Skikda

"Old" and "new" are of course misnomers, since the "new" names are in most instances older than the "old" ones. Such are the confusions created by colonialism.

NOTE ON ABBREVIATIONS

Many of the archival documents cited are letters which were sent up or down the military administrative hierarchy, running from the commandant of a cercle, at the local level, to the commandant of a subdivision, to the commandant of a division, corresponding to the province in the civil administration. The following abbreviations are used.

Divisions: Constantine (Cst.), Oran, Algiers (Alg.)
Subdivisions: Constantine: Constantine, Batna (Bat.), Bône, Sétif (Set.)
Oran: Oran, Sidi Bel Abbès (S.B.A.), Mascara (Msc.), Tlemcen (Tlm.), Mostaganem (Mgnm.)
Algiers: Algiers, Aumale (Aum.), Médéa (Med.), Miliana (Mil.), Orléansville (Orlv.)
Cercles: Constantine: Constantine, Djidjelli (Djidj.), Tébessa (Teb.) Ain Beida (Ain B.)
Batna: Batna, Biskra (Bsk.)
Bône: Bône, Guelma (Glm.), Souk Ahras (Souk A.), La Calle (La C.)
Sétif: Sétif, Bordj Bou Arreridj (B.B.A), Bougie (Boug.)
Oran: Oran
Siddi Bel Abbès: Sidi Bel Abbès
Mascara: Mascara, Tiaret (Tia.), Saida (Sai.)
Tlemcen: Tlemcen, Nemours (Nem.), Lalla Maghnia (Lalla M.)
Mostaganem: Mostaganem, Ammi Moussa (A. Moussa)
Algiers: Algiers, Dellys, Tizi Ouzou (Tizi O.)
Aumale: Aumale
Médéa: Médéa, Boghar (Bogh.)
Miliana: Miliana, Cherchell (Cher.), Teniet el-Had (T. el-Had)
Orléansville: Orléansville, Tenès (Ten.)

Other abbreviations are:
'adil (Ad.), Bureau Arabe Militaire (B.A.M.), Bureau Arabe Départemental (B.A.D.), bash 'adil (B. Ad.), Commandant (Cmdt.),

Governor General of Algeria (GGA), Ministre de la Guerre (Min. Guerre), Ministre des Affaires Étrangères (Min. Af. Et.), Procureur Général (Proc. Gen.), Procureur de la République (Proc. Rep.), Procureur Impérial (Proc. Imp.)

Bulletin officiel des actes du gouvernement (B.O.A.G.)

Recueil et mémoires de la Société d'Archéologie, Géographie et Histoire de Constantine (R.S.A.G.H.)

Revue algérienne des sciences juridiques, économiques et politiques (R.A.S.J.E.P.)

There are also a number of citations referring to information on individuals and families compiled for surveys in 1892 and 1898. The survey form, or feuille de renseignements, is abbreviated F. Rens. There follows the name of the individual. When this is the name attributed by the État Civil, it appears in capitals, as is the standard practice in Algeria. These documents are in dossiers arranged by administrative unit. The name of the unit is given (C.M.—Commune Mixte, and C.P.E.—Commune de Pleine Exercise), followed by the côte for the dossier. Hence for example:

F. Rens.: KATEB Abdelkader Ben Mostefa, in Dossier
C.M. Eulmas (Subdiv./Set.), in 9 H 33.

GLOSSARY

The following Arabic terms are frequently used in the text. Only where a word most commonly appears in the plural do I use the Arabic plural, which is formed by internal modification. Otherwise, I simply add an s. In the case of the word "majlis," one needs to determine from the context whether it is singular or plural.

'adil—notary, assistant to qadi
agha—third-ranking tribal chief
'alim (plural: 'ulama)—Muslim scholar; often used in a loose sense to denote notables, especially urban notables
ashraf—see sharif
bait al-mal—the community treasury which administers religious endowments
bash 'adil—chief 'adil, and the qadi's deputy in case of absence
bash agha—second-ranking tribal chief
ba'ya—oath of allegiance
bey—Ottoman provincial governor
beylik—in general usage, "government," referring to the Ottoman regime; in specific usage, a province, in Ottoman times
burj—a fort, or fortified house
dey—the Ottoman governor of the Regency of Algiers
duar—a small village or encampment
duru—unit of currency, came to refer to five "old" (pre-1958) francs
faqih (plural: fuqaha)—a legist, one who is learned in Islamic law
fiqh—jurisprudence
fuqaha—see faqih
habus—mortmain property belonging to religious institutions, or with a religious institution designated as the ultimate inheritor in case of extinction of the line of inheritors stipulated in the act of habus
islah—reform, reform movement
hadri—urban or civilized; also, an urban dweller
Hanafi—one of the four legal schools of Sunni Islam; in Algeria, most of the Turks and Kurughlis belonged to this school
juwad—military noble
katib—secretary or scribe

khalifa—top-ranking tribal chief
khuja—secretary, especially to a government official
khul'—divorce initiated by woman; requires return of sadaq to man
Kurughli—offspring of marriages between Ottoman soldiers and officials and local women, and their descendants
madrasa—a school (see also "médersa")
mahkama—the qadi's court
majlis—judicial assembly, made by French into court of appeal
Maliki—one of the four legal schools of Sunni Islam; dominant throughout the Maghrib
makhzan—the government; also used in referring to specific tribes serving as military auxiliaries to the beys
médersa—French rendering of "madrasa," used in this study to refer to the government schools for Arabic and Islamic studies
milk—private property
mufti—a religious official authorized to give consultations on points of law; found only in major towns
Mzabi—inhabitant of the Mzab oasis, member of the puritanical Ibadi sect; many of this group migrate to the North for commerce
nahda—revival or renaissance
qadi—Muslim judge
naib—deputy or representative, especially for legal purposes
qaid—fourth-ranking tribal chief
ra'ya—"subject tribes" under Ottoman rule, who carried the heaviest tax burden
sadaq—dower; the money or goods stipulated in a marriage contract to be paid to the bride or her family
shari'a—Islamic law
shafa'a (or shufa'a)—pre-emption
shaikh—an elder or wise man; head of a religious brotherhood or of a zawiya; or a chief of a tribal fraction
sharif (plural: ashraf or shurfa)—putative descendant of the Prophet Muhammad, loosely rendered as "religious noble"
sulh—conciliation, peaceful settlement of a dispute
talaq—repudiation of wife by husband, letting her keep sadaq
talib (plural: tulba)—student or educated person; often used to refer to free-lance notary
'ulama—see 'alim
wakil—deputy, legal representative
wali—saint or holy man
wilaya—in present-day Algeria, the rough equivalent of a French département; prefecture offices

Glossary of French and Franco-Algerian Terms

Political and Administrative Terms

Commune Mixte—local administrative unit controlled by government appointed administrator, overwhelmingly Muslim in population.

Commune de Pleine Exercise—local administrative unit with sizeable European colon population, run by municipal council, which was dominated by colons, even where Muslims were in a strong majority.

Conseil Général—provincial counsultative assembly, meeting once or twice a year in October, and sometimes in Spring, to pass recommendations on legislation and budget up to the Conseil Supérieur. Dominated by colons, with a handful of Muslim representatives.

Conseil Supérieur—consultative assembly for all of Algeria, meeting annually in November.

Délégations Financières—Algerian representative assembly, established in 1898 to satisfy colon demands for greater say in government affairs. Like the other assemblies, dominated by colons.

Legal Terms

agent d'affaires—lawyer's tout, stirred up business and recruited clients, generally of dubious reputation.

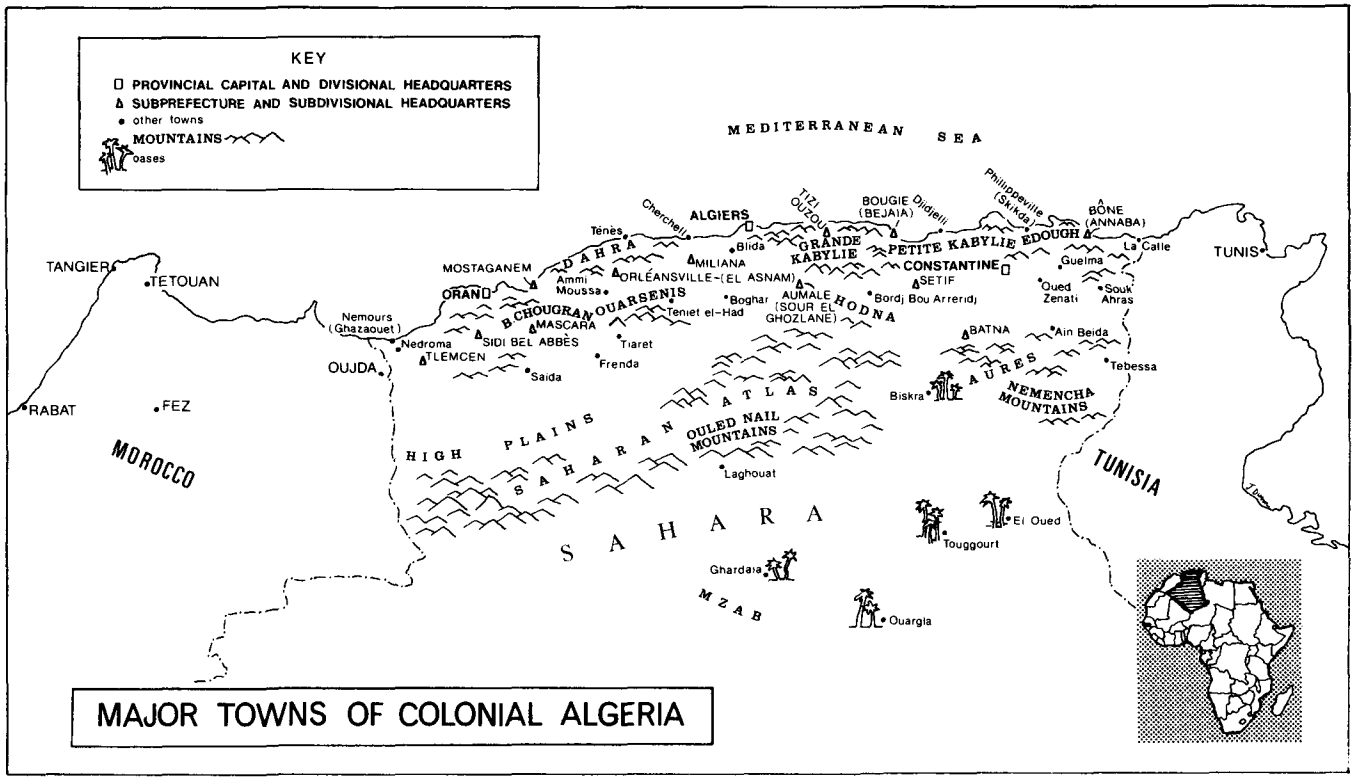
juge de paix—local judge of petty cases, but in Algeria with considerably wider jurisdiction than counterpart in France, and thus required to have a law degree.

Procureur Général—chief official of the Ministry of Justice for all of Algeria.

Procureur Impérial (1852-1870) or Procureur de la République (after 1871)—chief official of the Ministry of Justice at the provincial level, with a large role in the discipline, promotion, and transfer of Muslim magistrates in civil territory.

tribunal—court in a major urban center, presided over by magistrats.

MUSLIM LAW COURTS AND THE FRENCH COLONIAL STATE IN ALGERIA



MAJOR TOWNS OF COLONIAL ALGERIA

INTRODUCTION

Law and European Colonialism

Modern European colonialism in Africa and Asia was both an agent of change and an impediment to it. It exploited resources and manpower with its mines and plantations, its tax collectors and traders, and, at the same time, it harnessed traditional political hierarchies to its purposes, and paid homage to traditional values. It married modern arms, technology, and organization to traditional social and political forms, and, in the process, denatured tradition, made it archaic, and prevented development and change within a framework of tradition.[1]

But it was not always clear where the exigencies of promoting a capitalist economy and a modern administration should leave off, and where respect for tradition—whether in the name of humanitarian idealism or pragmatism—should begin. This boundary was particularly difficult to determine when it came to the sphere of law.

On the one hand, one needed European commercial and property law to promote the expansion of the market. Though the exchange might be unequal, it had to be orderly. On the other hand, one needed customary law to maintain political and social stability. One needed to promote contractual relationships, and, at the same time, shore up traditional status hierarchies. The pursuit of these needs could run at cross purposes.

Customary law regarding land, for instance, might prove an obstacle to the acquisition of land for modern farms or to the exploitation of minerals, though in some cases it could be used for precisely these purposes.[2] The introduction of European land law, with its emphasis on individual ownership, might undermine traditional po-

[1] This sort of argument was developed by many nationalist intellectuals during their struggle for independence against colonial regimes which appropriated to their own use symbols of traditional authority. See, for example, Jomo Kenyatta, *Facing Mount Kenya*, London, 1938. The notion of colonialism creating artificial archaism is developed by the Algerian scholar and educator Malek Bennabi in *Vocation de l'Islam*, Paris, 1954.

[2] Robin Luckham, "Imperialism, Law, and Structural Dependence: the Ghana Legal Profession," *Development and Change*, 9 (1978), pp. 201-248.

litical authority, or set off conflicts between groups seeking to manipulate the law to their own advantage.[3]

Also, questions of law in the colonial setting were closely concerned with relationships between communities, and inequalities in power relationships between communities. While administratively or economically it might make sense to unify laws, in terms of the politics of community relationships in the colonial setting, it often made sense to keep laws separate, in order to give the weaker group a sense of being protected, or to create a rationale for inequalities in political power.

Written law posed a special problem, for where there is written law there are legal specialists, and where there were native specialists in European law in the colonies they tended to turn the law to their own purposes, to contest the authority of the colonial regime. The same law which was used to integrate the colonial economy with the capitalist market could serve the purposes of political dissent. From Calcutta to Accra, the native lawyer was a thorn in the flesh of the colonial regime. Lawyers were commonly found among the first generation of nationalists, for it was they who knew best how to contest the colonial administration on its own terms, in terms understood by parliaments and by European opponents of colonial regimes.[4]

Colonial administrations tended to see the native lawyer as an unscrupulous opportunist, out to exploit the gullible, and to sow discord where patriarchal peace and harmony had prevailed. They were thus inclined to keep as much of law as possible in the hands of customary sages of the village councils, or in their own presumably equally sage hands. Custom and administration were to be allied against the corrosive, divisive effects of the law and lawyers. It was a facet of what Georges Balandier sees as colonialism's propensity to transform "every political problem into a technical problem to be dealt with by the administration."[5]

In his study of the Basoga of Uganda, Lloyd Fallers showed that this combination created serious role conflicts for men who occupied

[3] John Clammer, "Colonialism and the Perception of Change in Fiji," in Talal Asad, ed., *Anthropology and the Colonial Encounter*, New York, 1973, pp. 201-220; John Ruedy, *Land Policy in Colonial Algeria: the Origins of the Rural Public Domain*, Los Angeles, 1967.

[4] Omoniyi Adewoye, *The Judicial System in Southern Nigeria, 1854-1954: Law and Justice in a Dependency*, London, 1977.

[5] Georges Balandier, *Political Anthropology*, trans. A. M. Sheridan-Smith, London, 1970.

both bureaucratic and customary positions. And in judicial procedures, the imposition of clear norms and rules, called for by the bureaucratic principle, clashed with the stress of custom on closing breeches in social relations.[6]

Further, centralized control over customary jurisdictions made it possible for colonial authorities to intervene to decree changes in custom, with humane intentions, no doubt, but often with little understanding of the disruptive effects that such measures would have.[7] And it was also possible that such centralized control could be used to prevent changes in customary law, especially when colonial experts had committed it to writing.[8]

Nevertheless, it seems to have been possible, at least in some circumstances, for communities to adapt new offices to their own purposes. One might read some of the abundant criticism of men holding these offices "as a measure of the recognition that had been accorded to the court in village opinion."[9]

Islamic Law in the Colonial Setting

In many parts of the colonial world, there was another element to complicate the equation, and this was the existence of an indigenous written law, and a class specialized in it. This had obvious advantages over fragmented and poorly defined customary systems, although, as colonial jurists were often slow in realizing, giving official recognition to a written law often meant imposing the law followed by one class or group on communities which had followed their own customs.[10]

Working with an indigenous written law avoided contributing to the growth of a class of Europeanized native legal professionals. And it gave birth to what one might consider the opposite of this, a class of Orientalist European judges and legal scholars, immersed in the

[6] Lloyd Fallers, *Bantu Bureaucracy: A Century of Political Evolution Among the Basoga of Uganda*, Cambridge, U.K., 1956.

[7] See, for example, Marlene Dobkin, "Colonialism and the Legal Status of Women in Francophone Africa," *Cahiers des Études Africaines*, 31 (1968), pp. 390–405.

[8] This was the case of Kabyle customary law in Algeria, where Kabyle custom had been committed to writing in the 1870s. At the same time as the French preserved Kabyle custom, they introduced French schooling on a comparatively large scale, thus creating the forces which were to undermine custom.

[9] Daryll Forde, *Yako Studies*, Oxford, 1964, p. 194.

[10] See, for example, Lloyd I. and Suzanne H. Randolph, "Barristers and Brahmans in India: Legal Culture and Social Change," *Comparative Studies in Society and History*, 8 (1965), pp. 24–49.

fine points of Hindu or Confucian or Islamic law, and writing treatises and handbooks to guide their less learned colleagues.[11]

The most important of these written laws was the Islamic shari'a, which was followed, in varying rites, and in varying degrees of accommodation with customary law, from Morocco to Indonesia. With its stress on the unity of believers, and the important role assigned to the state, Islamic law seemed in some ways quite compatible with modern European values, as evidenced by Napoleon's enthusiasm for Islam.[12]

But the workings of Muslim courts had always rather bewildered Europeans. Those who had direct experience with them usually reported that the chaos of the procedures and the unruliness of the litigants were surpassed only by the corruption of the judges. Further, and in a quite different vein, Islam had played an important role in mobilization against European colonial rule in nearly all Muslim countries,[13] and it stood to reason that to encourage Islam, in any of its aspects, was to lend support, sooner or later, to resistance to European rule, of a sort far more difficult to deal with than that of a few highly vocal European lawyers. And, in rural areas of Muslim countries, it was often the case that customary jurisdictions still held sway when the Europeans arrived, and it was argued that it made sense to promote ethnic custom as a bulwark against Islamic political influence.[14]

Yet, where Islamic law was well established, bewildering though it might be, a colonial regime could not threaten to eliminate it or tamper with it without running grave risks,[15] for Islamic law was an integral part of the Islamic faith, and a threat to it could be seen as a step toward forced conversion. It was hard enough for Muslims to swallow their pride and reconcile themselves to colonial rule. The justification for doing so always had two provisos: that one could

[11] On some twentieth-century British examples, see Enid Hill, "Orientalism and Liberal Legalism," *Review of Middle East Studies*, 2 (1978), pp. 57-70.

[12] Edward Said, *Orientalism*, New York, 1979, pp. 82-83. Oddly, there are no entries for "law" in Said's index, though certainly this was a key area of scholarly production, and of collaboration between Islamic affairs specialists and the state.

[13] B. G. Martin, *Muslim Brotherhoods in 19th Century Africa*, Cambridge, U.K., 1976; and John O. Voll, *Islam: Continuity and Change in the Modern World*, Boulder, Colorado, 1982, especially Chapter 4.

[14] Jean-Louis Triaud, "La question musulmane en Côte d'Ivoire," *Revue française d'histoire d'Outre-Mer*, 61 (1974), pp. 542-571.

[15] This was learned through experience by Soviet authorities in Central Asia. See Gregory Massell, *The Surrogate Proletariat: Moslem Women and Revolutionary Struggles in Soviet Central Asia*, Princeton, 1974.

submit if further resistance were futile, and if one were assured that the practice of the Islamic religion, in both its ritual and its legal aspects, would be respected.

It was usually possible to separate out areas of law considered to be essential to the interests of the colonial regime, such as criminal law, and modern commercial law, to be put under the jurisdiction of European courts, and indeed this was a practice common to both European colonial and modernizing Muslim regimes. But in countries where the colonial state was concerned with creating a market in land to promote colonization and agricultural investment, it could not avoid becoming entangled in questions of Islamic law.[16]

The problems which the Muslim courts could pose for the colonial state are encapsulated in the term coined by Max Weber, "qadi justice."[17] According to Weber, qadi justice lacked the formal rationality found in the Roman law tradition, which he saw as essential to the development of the modern state and the capitalist economy. Rather, qadi justice is "empirical," adapting to the situation at hand, and, at the same time, it is, somewhat paradoxically, "fettered to tradition." In other words, Islamic law is not, at least from the Western point of view, systematically predictable in its results, nor is it amenable to imposed change.

In looking at Islamic law through Weberian lenses, one runs the danger of seeing it as something existing completely outside of and independent from the state.[18] To counterbalance this, it is useful to

[16] Much of the land in the Middle East and North Africa was held by collectivities or by the state. Where land was privately owned, it was subject to Islamic inheritance law, which prescribes mathematically precise formulae for the division of inheritances. This could create enormous difficulties for land transactions, although it could be exploited by agile speculators. For a summary of Islamic inheritance law, see A. A. Fyzee, *Outlines of Muhammadan Law*, Oxford, 1965. For a view of Islamic legal organization under a colonial regime in Southeast Asia, see Daniel S. Lev, *Islamic Courts in Indonesia*, Berkeley, 1972.

[17] Max Weber, *Wirtschaft und Gesellschaft*, Part 3, Chapter 6, in Gerth and Mills, eds., *From Max Weber*, New York, 1946, p. 219. See also *Max Weber on Law, Economy and Society*, trans. E. Shils and M. Rheinstein, Cambridge, Mass., 1954, pp. 237-244; and Bryan S. Turner, *Weber and Islam: a Critical Study*, London, 1974, Chapter 7. For the case on there being pattern and method in qadi justice, see Lawrence Rosen, "Equity and Discretion in a Modern Islamic Legal System," *Law and Society Review*, 15 (1980-1981), pp. 217-247.

[18] M. G. Smith argues that the Western framework of legal thought derives from the Western experience of political development, and is "preoccupied with the problem of centralization and indivisible sovereignty." It is thus inappropriate for the analysis of an Islamic legal system. See "The Sociological Framework of Law," in *Corporations and Society*, London, 1974, p. 121.

consider Fernand Braudel's observation on the sixteenth-century Mediterranean, where he saw that "experts in Roman law and learned interpreters of the Koran formed a single vast army, working in the East, as in the West, to enhance the prerogatives of princes."[19] One might prefer the formulation of Manfred Halpern, that the Muslim scholars could "filter and entangle royal commands" to suit their own interests,[20] but it is certainly clear that Islamic law is not incompatible with the existence of centralized political authority.

One can best understand qadi justice not as something independent from the state, but rather as something autonomous—and whose degree of autonomy might vary from one setting to another. To see this autonomy, one needs to look not simply at the qadi's court, but at what happens in the case of serious disputes. A difficult case is not sent from the jurisdiction of the qadi up through a clearly defined hierarchy of state-appointed judges, but instead it is thrown open to a rather vaguely defined (at least from a European point of view) process of consultation with the leading religious scholars, or 'ulama, either individually or collectively, in a judicial assembly, known as a majlis.[21]

This process of consultation is a hallmark of Islamic justice, as traditionally practiced, and it is a key to understanding the relationship between ruler and religious leaders in a Muslim society. The ruler had the right, indeed the obligation, to appoint the qadi, but the 'ulama as a group possessed a degree of autonomous authority, since it was they, as experts in the religious law, who were the ultimate arbiters of Islamic values.

This seemingly nebulous process of appeal by consultation, and the integrally related factor of the autonomy of the 'ulama, could be a serious irritant to the colonial administrator or military officer or judge, who was accustomed to working in well-defined hierarchies, where authority is delegated from the top. The analogy which some Muslim reformers in the nineteenth century drew between the majlis and the European parliament was by no means an artificial one.[22] The

[19] Fernand Braudel, *The Mediterranean and the Mediterranean World in the Age of Philip II*, trans. Sian Reynolds, New York, 1973, p. 683. On the judicial system of the sixteenth-century Ottoman Empire, see Stanford Shaw, *History of the Ottoman Empire and Modern Turkey*, Vol. 1, Cambridge, U.K., 1976, pp. 134–138.

[20] Manfred Halpern, *The Politics of Social Change in the Middle East and North Africa*, Princeton, 1963, p. 16.

[21] The most thorough summary of the institutional side of Islamic law is Émile Tyan, *Histoire de l'organisation judiciaire en pays d'Islam*, Second Edition, Leiden, 1960.

[22] Leon Carl Brown, *The Surest Path: the Political Treatise of a Nineteenth Century Muslim Statesman* (A Translation of the Introduction to *The Surest Path to Knowledge*

majlis, and the consultative process, were effective means of preventing arbitrary rule, whether it was by a sultan of venerated and heroic ancestry, or by a newly appointed colonial governor. Traditional Muslim rulers might use all manner of threats and inducements to bring the 'ulama into line, and an especially strong and effective ruler might forge them into "an army working to enhance the prerogatives of princes." Colonial regimes, however, were not likely to achieve this, and apt to resign themselves to the fact that, at least in certain areas of law, they had to deal with what they regarded as a band of cantankerous obscurantists.

There was one noteworthy exception to this rule, and this was Algeria, where the impact of colonial rule was more profound, and the eventual process of decolonization more violent, than in virtually any other African or Asian country.[23] Here, the French colonial regime, in the last half of the nineteenth century, made a thoroughgoing effort to impose the rationality of the Roman law tradition upon Algerian qadi justice. They transformed a loosely organized system, varying from one locality to another, into a highly centralized one, run along bureaucratic lines, subordinated to the French courts through the appeal process.[24]

Although bureaucratization of the Muslim courts accorded well with the goals of the colonial regime, it was sharply disputed as to whether one of its byproducts—the reenforcement of the Algerian Islamic identity—accorded with those goals. Thus, in the 1880s, there was a major campaign, led by colon politicians and French jurists, to eliminate both the Muslim courts and the law schools, and to put Islamic law entirely in the hands of French judges. This led the Algerian Muslim urban notables to rally in protest, in what was their first concerted political action in sixty years of colonial domination.

Concerning the Conditions of Countries by Khair al-Din al-Tunisi), Cambridge, Mass., 1967.

[23] For Frantz Fanon, the extreme violence of the revolution in Algeria helped to unmask what he considered to be universal features of the colonial situation. His best insights on Algeria can be found in *L'An Cinq de la Révolution Algérienne*, Paris, 1959. The English version is *A Dying Colonialism*, trans. Haakon Chevalier, New York, 1967.

[24] Another, rather different, example was India, where the British reduced the qadi to the role of consultant to the British magistrate, and elaborated what was to become known as Anglo-Muhammadan law. See Joseph Schacht, *An Introduction to Islamic Law*, Oxford, 1964, especially Chapter 14, "Anglo-Muhammadan Law and Droit Musulman Algérien." On the Islamic jurisprudence of French courts in Algeria, see Jean-Paul Charnay, *La vie musulmane en Algérie selon la jurisprudence de la première moitié du vingtième siècle*, Paris, 1965.

This movement marks the beginning of modern protest and resistance in Algeria. The notables eventually received a sympathetic hearing in metropolitan France, but, strangely enough, some of their demands also received the support of colon politicians. It was thus that the courts and the Islamic law schools were saved, and their status as permanent fixtures in the colonial system confirmed.[25]

The transformation of the Muslim court system had a powerful impact on Algerian society. It brought about far-reaching changes in the legal process, by instituting appeals to the French courts and eliminating the traditional process of consultation. It brought a large number of Algerian Muslim religious scholars into the service of the colonial state, and laid the foundations for an official Islamic establishment, including "clergy," scholars, and judges. And, finally, it helped to create a kind of uneasy equilibrium within the colonial cities and towns, whereby the Muslim community retained a distinct identity in its legal affairs, and, at the same time, accepted that it could exercise only limited influence in the realm of politics.

This Romanized, bureaucratized system of qadi justice, while its creation had in itself represented a major change, came in the end to be an impediment to change in two significant ways. First, Islamic law was used as a rationale for political inequalities until the political reforms following World War II, when it was finally decided that French citizenship and Muslim legal status were compatible. But by then it was too late for reform.[26] And, second, because Algerian Islam was so thoroughly bureaucratized, and placed under the control of French officials, evolution and change within Algerian Islam was impeded. Having effectively destroyed the traditional autonomy of the 'ulama, the French made it impossible to protest and dissent within officially recognized Islamic structures. It is thus that one Algerian Muslim scholar, on the eve of the revolution in 1954, pronounced that colonialism was "an immense sabotage of history."[27]

Historical and Sociological Perspectives

The study of the bureaucratization of the Muslim courts opens up important perspectives in both colonial Algerian history and the so-

[25] For an insightful summary of the tensions and contradictions in French Islamic legal policy in Algeria, see Jean-Robert Henry, "Droit musulman et structure d'état moderne en Algérie: l'héritage colonial," in Ernest Gellner and Jean-Claude Vatin, eds., *Islam et politique au Maghreb*, Paris, 1981, pp. 305-313.

[26] Tony Smith, *The French Stake in Algeria, 1945-1962*, Ithaca, N.Y., 1978.

[27] Malek Bennabi, *Vocation de l'Islam*, Paris, 1954, p. 101.

ciology of Islam. It provides an opportunity to think about Algeria in Islamic terms, and to reintegrate the Algerian colonial experience with that of other Muslim countries, whose experience with European domination was usually through one or another form of indirect rule, whereas the Algerian experience is identified with political direct rule and cultural assimilation.

The sociology of Islam began as a colonial discipline, with its roots mainly in Algeria and Morocco, and it was concerned above all with types of Islamic leader who exercised influence independently of the state, or at least independently of any formal connection with it.[28] In Morocco, some attention was paid to the role of the traditional state in religious affairs. But in Algeria, not a word was breathed about the relationship between the colonial state and Islam, or about the official Islamic establishment. The sociology of Islam meant primarily the study of Islam as a folk religion.[29] The image which one gets of Algerian Islam in reading such studies is a decidedly partial one, and it does not give one a basis for understanding the nature of Algerian Islam as it has developed since independence.

This aspect of the sociology of Islam in colonial Algeria is an illustration of a much wider problem in the study of social and cultural life in the colonized world, where anthropologists have often gone about studying peoples as if the colonial state, or its independent successor, did not exist, or at least did not have all that great a bearing on day-to-day life. The approach of this study is to take rather the opposite tack: to examine in detail how the colonial state intervened in the lives of the colonized, especially in an aspect of it which would normally be termed traditional.

The Historical Perspective: the Colonial State and the Reordering of Algerian Society

There would seem to be no place for the Muslim courts in the theories of direct rule and assimilation, which were the guiding principles of colonial administration in Algeria. Direct rule meant the in-

[28] Edmund Burke III, "The Sociology of Islam: the French Tradition," in Malcolm Kerr, ed., *Islamic Studies, A Tradition and Its Problems*, Malibu, Calif., 1980. For a biting criticism of French Islamic policy in Algeria, see Louis Massignon, "Les résultats sociaux de notre politique indigène en Algérie," *Vie intellectuelle*, 3 (1930), reprinted in *Opera Minora*, Paris, 1962, pp. 559-568.

[29] The most representative work of this sort is Émile Dermenghem, *Le Culte des Saints dans l'Islam maghrébin*, Paris, 1954. For a survey, see Philippe Lucas and Jean-Claude Vatin, *L'Algérie des anthropologues*, Paris, 1982.

troduction of French institutions at all levels of the Algerian system. Assimilation meant the propagation of French language and culture.[30]

In the first phase of French colonial rule, in the 1830s, direct rule involved the removal of all vestiges of the previous state, the Ottoman pashalik. The French argued that this state was simply a feature of colonial rule by the Ottoman Turks, who were being replaced as colonial rulers by themselves, and that there was no such thing as an indigenous Algerian state. There was thus to be no equivalent in Algeria of the Moroccan sultan or the Tunisian bey to serve as a symbol of national sovereignty, and a focus of national unity. The Amir 'Abd al-Qadir, who led a resistance movement from 1832 to 1847, and eventually went into exile in Damascus, was treated by the French, not as a deposed sovereign, but as a representative of a kind of aristocratic reaction, what they would call a fronde.[31] The French saw in 'Abd al-Qadir, not the representative of a nation, but the representative of a principle, chivalry, which many of them admired, but which most of them saw as part of an irrevocable past.

The second phase of direct rule involved the dismantling of tribal structures—political units based on the principle of shared kinship—and the rather haphazard assemblage of their fragments into territorial units—full-fledged communes, under colon-dominated local governments, or communes mixtes, under the tutelage of a French administrator.[32] The traditional titles of agha and qaid remained in circulation, but the men who held them for the most part lacked prestige, and were generally characterized by servility toward the French, and predatory habits in dealing with their own people.[33]

One needs to view the policy of deliberate fragmentation in the

[30] French institutions were modified to meet Algerian conditions, allowing for less participation and more constraint, but they were all derived from French models. For a description of Algerian colonial institutions, see Jean-Claude Vatin, *L'Algérie politique: histoire et société*, Paris, 1974. Originally, the term "assimilation" was applied to institutions, in the sense of making Algerian institutions the same as those in France, with little thought as to where the Algerian Muslims would fit into them. I am using the term here in the later and now current sense of cultural assimilation.

[31] On the frondist thesis, see Raphael Danziger, *Abd al-Qadir and the Algerians*, New York, 1976. For a highly readable narrative, see Wilfred Blunt, *Desert Hawk: Abdel Kader and the French Conquest of Algeria*, London, 1947.

[32] Kenneth Perkins, *Qaids, Captains, and Colons: French Military Administration in the Colonial Maghrib, 1844-1934*, New York, 1981. See also Peter Fitzgerald, "The District Commissioners of Colonial Algeria," *Proceedings of the French Colonial Historical Society*, 3 (1978), pp. 163-177.

[33] Peter von Sivers, "Les plaisirs du collectionneur: capitalisme fiscal et chefs indigènes en Algérie (1840-1860)," *Annales: économies, sociétés, civilisations*, 35 (1980), pp. 679-699.

context of Algerian political and social conditions,[34] and to consider that those conditions were not by any means unique to Algeria. The policy was aimed against the extensive and autonomous structures of the tribes, which had impeded the assertion of effective influence by the colonial administration.[35] Even after the principal resistance movements had been put down in 1848, the French were plagued by what they saw as essentially tribally based rebellions. These lasted until 1871 in the coastal area, and until 1917 in the far reaches of the desert.[36] Further, tribal resources in land were insulated from the capitalist marketplace, whose expansion the colonial state was committed to promoting, the occasional romantic-minded Bureau Arabe officer notwithstanding.[37]

The problem of tribal dissidence was a serious one for all modernizing regimes in the Middle East, including indigenous ones, such as those of 'Abd al-'Aziz Ibn Sa'ud in Saudi Arabia, and Reza Shah in Iran.[38] One might suggest as a general rule that the greater the fragmentation engendered by the regime, the greater the problems which arose in establishing a viable new hierarchy, patching together the debris of the tribal system into a new one, trying to fill the vacuum left by the removal of tribal leaders with an assortment of urban interlopers and rural parvenus. The Algerian experience was distinguished by the particularly radical character of fragmentation. Marshal Lyautey, the most famous exponent of indirect rule in the French colonial school, saw at first hand the unhappy results of direct rule in Algeria at the end of the nineteenth century, and thus, in laying the foundations of the Moroccan protectorate, he placed great stress on keeping traditional political and social structures intact.

While the structures of resistance had been largely tribal, the ide-

[34] Annie Rey-Goldziguer, *Le Royaume Arabe: la politique algérienne de Napoléon III, 1861-1870*, Algiers, 1977.

[35] For a highly systematized view of the relation between states and tribes in the Muslim world, see Xavier de Planahol, *Les fondements géographiques de l'histoire de l'Islam*, Paris, 1968.

[36] The most important rebellions occurred in 1864-1865, 1871, and 1881. The only recent book-length study of one of them is Djilali Sari, *L'Insurrection de 1881*, Algiers, 1981. There were two significant uprisings during World War I, in the Aurès mountains and near the town of Mascara, which can be seen as a sort of transition between primary resistance and the revolution of 1954-1962.

[37] The key measure in breaking up collective ownership of land was the Senatus Consulte of 1863. See Goldziguer, *Royaume arabe*, and André Nouschi, *Enquête sur le niveau de vie des populations rurales constantinoises de la conquête jusqu'en 1919*, Tunis, 1961.

[38] G. Troeller, *The Birth of Saudi Arabia*, London, 1976; Nikki Keddie, *Iran, Roots of Revolution: an Interpretive History of Modern Iran*, New Haven, 1981.

ology was Islamic.[39] Sufi brotherhoods had a key role both in sustaining the morale of resistance and in providing a framework of cooperation between tribes. The policy of assimilation grew in part out of a desire to neutralize the political potential of Islam.[40] It might also be seen as responding to a need to provide a cultural basis for the anticipated reconstruction of tribal fragments into a new society, amenable to centralized rule, and to the mobilization of resources in land and labor to accommodate the expansion of colonial commercial agriculture.

But assimilation was opposed from some colonial quarters.[41] In so far as it meant the enfranchisement of Muslims within the French system, it was opposed by the colons. Connected to this was their desire to monopolize for themselves nearly all public investment, not only in economic projects, but in the cultural and social spheres as well. Their policy for the natives was, in effect, not one of acculturation, but rather one of deculturation. For the Muslims, assimilation was a threat to their cultural heritage and identity, and hence to their very ability to act as a cohesive social group.

As a result, assimilation in Algeria was a highly restrictive and emotion-charged process.[42] To gain full access to modern scientific and technical culture, and to the rights of a citizen, the Algerian had to abandon nearly all aspects of his culture, and cut himself off from his community. The final, decisive step of formal naturalization as a French citizen required the renunciation of Islamic law. If, in theory, a broadly based assimilation would have provided the means for coherent social reconstruction, this restrictive assimilation merely accentuated the problem of fragmentation, by depriving Algerian society of educated leaders.

Here again, the case of Algeria is a particularly radical manifestation of a problem common through much of the Muslim world. Modern scientific and technical culture, even though the Muslim world had made a strong contribution to its development, came to the Muslim world in the nineteenth century as an essentially European im-

[39] Peter von Sivers, "The Realm of Justice: Apocalyptic Revolts in Algeria (1849-1879)," *Humaniora Islamica*, 1 (1973), pp. 47-60.

[40] Yvonne Turin, *Affrontements culturels dans l'Algérie coloniale: écoles, médecines, religions, 1830-1880*, Paris, 1971.

[41] The most thorough study of these and many other questions in the middle period of colonial history is Charles-Robert Ageron, *Les Algériens musulmans et la France, 1871-1920*, 2 volumes, Paris, 1968.

[42] Fanny Colonna, *Instituteurs algériens, 1883-1919*, Paris, 1975. For a personal account, see Fadhma Aith Mansour Amrouche, *Histoire de ma vie*, Paris, 1972.

port. Often one found that either foreigners or local non-Muslim minority groups had privileged access to modern education and the modern sector of the economy, while the Muslims, although they were politically dominant, were mainly confined to traditional education, to the traditional sector of the urban economy, and to landed wealth. For a Muslim, gaining a position in the modern economic or technical spheres thus involved a departure from traditional roles, as well as competition with foreign or minority groups, who in many cases could manage to be modern without great sacrifice to their social identity.

Algeria's distinction was that the colons were exceptionally strong compared to other comparable groups in Muslim countries, above all because they dominated politics and had obtained a large share of Algeria's landed wealth. They had intruded on what were normally Muslim preserves. For Algerian Muslims, then, traditional sources of power and prestige were thus sharply eroded, while access to the modern sector remained substantially blocked.

This background is necessary to understanding the importance of the Muslim courts in colonial Algeria. One aspect of their importance should be immediately evident, namely that they were a bulwark of the Muslim identity against the threat of assimilation. And because of the dismantling of the Ottoman state, the Muslim courts were the only institutional focus of identity available. For the colons, the Muslim courts had an ambivalent character. They could be used as part of an argument against the extension of political rights, but, at the same time, they carried the latent threat which colons tended to see in anything Islamic.

As will emerge in the course of this study, the Muslim courts did not fall victim to the same process of fragmentation as tribal political structures. In fact, rather the opposite occurred. Judicial structures were at an early date detached from tribal structures, with their network of rural markets, and integrated with the network of urban centers which were the nodal points of the colonial economic and political system.[43] The qadi, or Muslim judge, became a leading figure in a new emerging stratum of Muslim urban notables, comprised of government employees, merchants, and professionals, many of whom were also landowners. If leaders were to emerge to speak for the collective interests of the Algerian Muslims within the colonial

[43] Xavier Yacono, *La colonisation des plaines du Chélif*, 2 vols., Algiers, 1955-1956; and A. Prenant, "La propriété foncière des citadins dans les regions de Sidi Bel Abbès et de Tlemcen," *Annales algériennes de géographie*, 2 (1968), pp. 2-108.

framework, at either the national or the local levels, they were almost bound to come from this group.[44]

Within this group, the Muslim court was important as a focus of social and cultural identity, and as a forum for regulating their own social and economic conflicts. Its importance was accentuated by the fact that, until the 1920s, the Muslim notables, to say nothing of the masses, had very little say in local politics, which were in the hands of the elected representatives of the colons. Within the colonial town of the late nineteenth and early twentieth century, the Muslim court was the only institution with which the Algerian Muslims could identify, and also the only one through which they could bypass the colon-dominated local political structures to higher levels of the French administration.

The Sociological Perspective: the Colonial State and the Delegation of Religious Authority

How smoothly did this transformation occur? How did it change the legal process? How did it affect the nature of religious leadership in Algeria, and the relationship of the religious leaders to the colonial state? A central aspect to all these questions is that when the French imposed uniform structures on the Algerian Muslim judicial system, there was significant variation in the results from region to region. In the East, initial adaptation was fairly smooth, but Muslim leaders of the region worked to maintain their autonomy within the system. When the Muslim courts were threatened with dissolution in the 1880s, Easterners mobilized to defend them. In the West, the imposition of the new structures initially provoked a severe crisis, but, after that, the adaptation of Westerners to them was relatively passive.

The principal tools which we have for the analysis of Muslim religious leadership in North Africa are the concepts of 'ulama and marabout, the scholars and the holy man. On the surface, they are simple enough. The 'ulama are Muslim scholars, bearers of an austere, egalitarian, scripturalist Islam, closely associated with the affairs of state, as judges and legal consultants. They form a prestigious elite within the Muslim city. The term "marabout" refers to a saint, or to his descendants, who are thought to inherit his baraka, or divine grace, and who form hereditary religious lineages, who are special-

[44] On the notables in a small Algerian town, see Gilbert Grandguillaume, *Nédroma, évolution d'une médina*, Leiden, 1976. On a Moroccan example, see Kenneth Brown, *People of Salé: Tradition and Change in a Moroccan Society*, Manchester, U.K., 1976.

ized in religious tasks. Their efficacy in these tasks—whether rituals, or healing, or mediation—is thought to depend on their possession of baraka. The 'ulama uphold the known, revealed principles of religion, embodied in the shari'a. The marabouts intercede with God, in matters where His will cannot be fully understood, by virtue of their baraka.

When they are considered together, the concepts of marabout and 'ulama are inevitably linked to the question of the relationship between tribes and cities in North Africa. Should they be viewed as separate systems, largely isolated from one another? Or as part of a complex whole? Related to this is the volatile question of whether, in precolonial Algeria, there was a state worthy of the name. Were the cities mere islands of civilization in a sea of tribal anarchy? Were such ties as existed between city and tribe just a confusing welter of transient alliances and conflicts? Or was there substantial articulation, an enduring pattern of social and political ties?

One approach to the maraboutic phenomenon is to look at it within tribal society, isolated from the state and the cities, on the assumption that it can be best understood in this way. This is the approach of Ernest Gellner, who explains the role of marabouts in relation to a social system based on segmentary opposition.[45] The maraboutic lineages are seen to occupy the interstices of this system, acting as mediators between opposed tribal segments.

Mediation is the key here, for it implies the absence of any state control in the process of resolving conflicts. Disputes in a segmentary society are not between individuals who are members of a unified community, in which they have a legally defined status, but rather between individuals as members of agnatic groups. Such disputes cannot be resolved by a sovereign judgment applying a written code of law, but rather need to be resolved through the mediation of a professional neutral, applying his hereditary or personal divine inspiration to the task of maintaining balance between the opposed segments.

From this position as mediator, the marabout can also act as a mobilizer, rallying the tribes against external aggression, as in resistance to the Spanish and Portuguese incursions in the sixteenth century, or in resistance led by the Sanusiyya to the Italian invasion of Libya in the twentieth century.[46]

The problem with the segmentary approach is that it deals with

[45] Ernest Gellner, *Saints of the Atlas*, London, 1969.

[46] Edward Evans-Pritchard, *The Sanusi of Cyrenaica*, London, 1949.

the tribal domain in isolation from, or in resistance to, the state. In North Africa, at least since the sixteenth century, only tribes in the very remote mountain or desert regions existed in effective isolation from the state. Nevertheless, using segmentary theory as a starting point helps to formulate some useful questions. At what point, or in what circumstances, do the disputes of tribesmen become amenable to adjudication? When do problems of social relationships, as distinct from those of spiritual and physical well-being, move from the realm of baraka to that of shari'a? When we come to the view of the maraboutic phenomenon advanced by Clifford Geertz, we have passed that point. Geertz presents the Moroccan tribes, not as living in isolation from cities and state, but rather as living in uneasy symbiosis with them.[47] In this view, the maraboutic phenomenon is an element in a larger, unified system, or, to state the thesis more accurately, it became part of a unified system, that of Morocco under the Sa'adian and then the 'Alawite dynasties, between roughly the fifteenth and seventeenth centuries.[48] In becoming a unified phenomenon, maraboutism became something different: sharifism.[49] Where the marabout simply claims descent from a local holy man, the sharif claims descent from the Prophet Muhammad, and it is this which creates the unity of the Moroccan system. As a social ideology, sharifism unifies local religious leaders into a class, and as a political one, it creates a sort of centralization of baraka.

In the analysis of the unified Moroccan social and political system by Abdallah Laroui, the ashraf and the 'ulama are conceived of as distinct orders within the complex hierarchy of Moroccan society.[50] He points to some key distinctions between them. The power and prestige of the ashraf is in effect delegated by the sultan, in his official recognition of their status as descendants of the Prophet, and he himself is a sort of supreme sharif. Laroui does, however, make note of some exceptional cases where ashraf do have independent bases of power at a local level. Another complicating factor in the system was the presence of Sufi tariqas, or brotherhoods, and one should not be

[47] Clifford Geertz, *Islam Observed: Religious Development in Morocco and Indonesia*, Chicago, 1968.

[48] Magali Morsy, *Les Ahansala: examen du rôle historique d'une famille maraboutique de l'Atlas au dix-huitième siècle*, Paris, 1972.

[49] This phenomenon is found in nearly all parts of the Muslim world, though its character varies from one setting to another, adapting to local social organization and concepts. It would form an interesting subject for a broad comparative study.

[50] Abdallah Laroui, *Les origines sociales et culturelles du nationalisme marocain (1830-1912)*, Paris, 1980, pp. 92-103.

surprised that sultans have from time to time sought ways of either unifying or abolishing them.

An important characteristic which differentiates the 'ulama from the ashraf, as Laroui sees it, is that they have a certain autonomy from the state, the foundation of which lies in the inalienable religious endowments, which provide an independent financial basis for the schools and mosques. One should also mention the 'ulama's role in the majlis, or judicial assembly, since it is in this institution, rather than the office of qadi (which the ruler fills by direct appointment) that we can see them exercising authority in autonomous fashion. And one should note that the principle at work in the majlis, in which the consensus of the leading 'ulama is sought, in especially difficult cases, also operates when the 'ulama pronounce their views on the legality of an action taken by the sultan.

Laroui stresses that the power of the 'ulama is limited, and that it is linked with the power of the sultan, in his image, "twinned" (*co-naissant*) with it. The 'ulama can criticize, they can demand that the sultan justify his actions in terms of Islamic principles, but they do not have the symbolic or political basis for venturing into open rebellion.

The problem, in looking at Algeria, is that one cannot speak of a maraboutic phenomenon which had been incorporated into a unified system as it was under the umbrella of the sharifian dynasties of Morocco. The Ottoman sultans, under whose rather distant sovereignty Algeria fell from the early sixteenth century until 1830, were the guardians of Islam, bound to uphold Islamic law and to defend the House of Islam from the infidel, but they did not, like the 'Alawite sultans of Morocco, lay any claim to a hereditary religious character. The relationship between the Ottoman governors of Algeria and the local marabouts, and then between the French rulers and these same figures, could best be described as a tactical one, based on mutual convenience.[51] Ottoman governors, or French ones, could grant favors to local marabouts, and in return benefit from their religious influence. But this could not serve as the basis of a coherently unified system.[52]

The French, through the incessant fighting of the early years of

[51] On Ottoman Algeria, see Lucette Valensi, *Le Maghreb avant la prise d'Alger*, Paris, 1970; and Andrew Hess, *The Forgotten Frontier: A History of the Sixteenth Century Ibero-African Frontier*, Chicago, 1978.

[52] In Algiers, there was an officially recognized corporation of sharifs, headed by a naqib, as there was in other Ottoman cities, but it does not seem to have survived into the colonial period.

their conquest, came to recognize all too well the role which the marabouts could play as leaders of rural resistance, especially in their capacity as leaders of the Sufi tariqas. Against this background, I suggest, the decision to create a unified, centralized Muslim court system in 1854, just as the French were completing the pacification of northern Algeria, represented a bold venture in religious policy, an attempt to build an Algerian religious unity, under the control of the colonial state, on the basis of Islamic law. It was a bureaucratic, secular-minded approach to the problem, as befitted mid-nineteenth-century France.

But there was to be a good deal more to this venture than simply unifying the system and building a corps of Muslim religious leaders loyal to France. For, in the process, the French would seek to introduce to, or, if necessary, impose upon, the Muslim judicial system the rationality which the French expected of legal institutions, and which was required for effectively establishing a market in land.

There was an impressive logic to the project. Since law, as the French understood it, involved learning rather than belief, it was an aspect of Islam which could be easily integrated into the colonial system, proving France's benevolence toward Islam, and providing a basis on which to draw the religious leaders, as a class, into an alliance with the colonial state. And yet there was also a certain naiveté to it, since the French had little understanding of the traditional judicial system, and were inclined to project their own ideas on it. They did not seem to see that an abrupt intervention in legal affairs, imposing a rigidly uniform judicial system, might lead to resistance, or to confusion and turmoil. At the same time, it was bound to arouse the ire of those French settlers, administrators, and judicial officials who were opposed to giving any scope to Islam within the French system.

If one viewed the problem of imposing uniform structures simply as one of centralization, then one would be likely to expect the most serious problems to arise in remote areas, distant from urban and state influence, where, in Weber's terms, the "prophetic justice" of the marabouts prevailed. But the most serious problems arose in the densely populated areas of the West, particularly in the region of Mascara. Here, social, political, and religious problems were all interwoven, and the source of difficulty lay, not in saintly mediation, but in the very broad scope which seemed to be given to judicial consultation.

In Mascara, members of a local sharifian aristocracy had a predominant say in judicial affairs, and central to this was the informal struc-

ture of the majlis, the composition of which varied from case to case. The great flexibility of the majlis, and the stress on forming judgments through consensus, provided them with a means of parrying the influence of the state in legal questions. The Mascaran ashraf, it should be added, had been the mainstay of 'Abd al-Qadir's resistance movement and state-building effort, so they saw the French state and its local allies with particular hostility. But the critical point is that, in this setting, the principle of consultation seemed to be pushed to the point where autonomy shades into independence. The great flexibility of the majlis, and the assertion of independence from the state of a strong local religious aristocracy, seemed to be closely interrelated.

However, when it became clear that the French would succeed in imposing their formal structures on the judicial system, this same group would recognize the importance of seeking positions in it. In other words, it was as if, once independence had been lost, it was perceived to have been completely lost, and the power of the colonial state was accepted with resignation, and with an eye to salvaging what one could of one's own wealth and status.

In the East, the Ottoman state had more effectively established its influence in both the political and religious domains. Many rural marabouts had come to terms with the Ottoman state, and they looked to the 'ulama of the capital for their role models. In the capital, Constantine, 'ulama and Muslim rulers had worked out the sort of modus vivendi typical of the classical Muslim city.[53] In it, the 'ulama were inured to the preponderance of the state in political affairs, and, in so accommodating themselves to the state, they carved out a degree of autonomy for themselves. The initial intervention of the French in judicial affairs followed very much the pattern of the Ottoman rulers before them, so that it did not create the problems in Constantine that it did in the West.

But it was not long before it became evident that the intervention of the colonial state was to be of a radically different character than that of the traditional Muslim state. Their insistence on highly formal procedures and structures, on bringing to Islamic judicial affairs the Weberian rationality of the French system, meant that the 'ulama were bound to lose their autonomy, unless they could keep pace with the French demand for "rationality" by elaborating more formal procedures, and a clear and stable jurisprudence, which anticipated any criticism which the French might make on a humanitarian basis.

[53] Ira Lapidus, *Muslim Cities in the Later Middle Ages*, Cambridge, Mass., 1967.

The 'ulama of Algeria, particularly Constantine, did attempt to follow just such a strategy to retain their autonomy, but in the end they failed, not due to their own inherent inability to achieve this rationality, but because of the colonial state's insistence on control. It was thus that the majlis was replaced by a channel of appeal to the French courts, and higher level Islamic education came under direct French control.

What happened, in effect, was that the French took the office of qadi—the one office in the traditional Islamic system where the authority of the religious official is always delegated by the ruler—and they made it the model for the entire Islamic establishment. Any religious office in which one exercised scriptural authority, whether it was expressed in legal judgments, or scholarly discourse, or public preaching, eventually came under the direct control of the French.

When this process had been completed, by the early twentieth century, scriptural authority in Algeria had taken on some of the characteristics of sharifian authority in Morocco. In the latter, independent ashraf with a local base of their own represented an implicit challenge to the sultan's authority. In Algeria, when a group of individuals outside the control of the state laid a claim to scriptural authority, it was a challenge to the colonial state. This was the situation which arose in the 1930s, with the creation of the Association of Reformist 'Ulama, who were to be an important element in the development of the nationalist movement.[54] One of their principal demands was the separation of religious affairs from the control of the state. They did not succeed in implementing this demand, although they did, at the end of the long struggle for independence, take over the religious apparatus of the Algerian state.

While the French colonial state was much stronger as an administrative structure than had been its Ottoman predecessor, with more effective control over worldly affairs, it was singularly weak when it came to spiritual matters. Religious figures who exercised their authority in the spiritual realm were treated very warily, and carefully surveyed. It was only after the French had fully asserted their control over scriptural matters that they began to place greater emphasis on building up their alliances with local marabouts and Sufi tariqa leaders. One might suggest that this grew out of a belated recognition that in so completely destroying the autonomy of the 'ulama, they had deprived them of any popular influence.

[54] Ali Merad, *Le réformisme musulman en Algérie de 1925 à 1940: essai d'histoire religieuse et sociale*, Paris, 1972.

The Making of a Colonial Islamic Establishment

We can now turn our attention to a brief outline of the chronological development of French policy and Muslim response, first in the area of judicial affairs, and then in the closely related one of education.

The assertion of control by the French came about in stages. What was in some ways the most decisive step had already occurred in 1844, before the establishment of the unified judicial system, when the French confiscated the habus endowments, and undertook to pay the salaries of the Muslim "clergy," and the costs of maintaining the mosques. In the history of the court system, the progression from one stage to another was uneven, and accompanied by sometimes severe conflicts. The most critical issues, with a direct bearing on the question of autonomy, were the questions of appeals channels and the recruitment of judges.

The first unified system, established in 1854, did include a system of appeals wholly independent from the French. But it was so rigidly structured that it provoked a crisis, which led in turn to the abolition of the appeals jurisdiction, the majlis, in the early 1860s, and the substitution of a channel of appeal from the qadi's court to the French courts.

At the same time, the French instituted a monopoly of recruitment through the official Islamic schools, the médersas, located in Tlemcen, Algiers, and Constantine. Control over these schools gave the French not only a strong hand in the selection of future judges, but also an opportunity to inculcate them with French ideas, or at least with a pro-French reading of the classical texts of Islam.

After the outbreak of a rebellion in 1864–1865, the French were prepared to listen to the demands for the restoration of autonomy, which were most strongly voiced by al-Makki Ben Badis, the qadi of Constantine, who can be seen as a defender of the traditional position of the 'ulama, but also as one who recognized that change and adaptation were necessary in order to defend that position.[55] The French made only limited concessions. The most important of these was to open up recruitment to students from all schools, including local zawiya schools, maintained by scholarly marabouts, independent schools in the urban mosques, and Islamic universities in Tunisia, Morocco, and the Middle East.

It is at this point that we can see the first stirrings of Islamic reformism and modernism in Constantine, the call for the revitalization of Arabic education, incorporating into it modern scientific educa-

[55] Al-Makki was the grandfather of the famous reformist leader 'Abd al-Hamid.

tion, and the purification of the faith. The principal exponent of reform was 'Abd al-Qadir al-Majjawi, who began teaching in an independent school, but was soon pressured into government service at the official médersa. In this episode, it is possible to see a crucial aspect of the reformist and modernist movement in the Islamic world: that it was linked to an effort by the more far-seeing 'ulama to defend their autonomy in the context of a changing political and social system. They saw that to defend Islamic values, they would have to be understood and explained in new ways. Those who sought to console themselves with the unchangingness of tradition were themselves in fact being changed: from 'ulama into time-serving religious and judicial bureaucrats.[56]

In the late 1870s, and in the 1880s, the entire official Islamic establishment came under attack from forces which had been harrying it all along, colon politicians and French judicial officials, though by no means all members of these groups joined in the attacks. As these attacks became more serious, they stimulated protests by the urban notables, especially in the East. After a complex series of events, the Muslim courts received what amounted to their official consecration within the colonial system. The effect of attacks by colon politicians had been to help reenforce the dependence of the urban notables on the central administration.

By this time, it had become clear that official relations between France and Islam in Algeria had been confined to a rather narrow channel. The Muslim courts contributed little to the sense of legitimacy of the colonial administration, and, at this time, Islamic legitimacy was becoming more important to colonial France, as she contemplated plans for expanding her control in the Muslim world in West Africa and Morocco, and as she vied for influence in the Middle East.

This led to the final phase in the building of the official Islamic establishment, when the French attempted to build up its religious and educational wings along the same lines as the judicial one. Central to this was the expansion of the scope of the official médersas, up until then almost exclusively legal training schools, and the addition of a superior division in Algiers.

By the outbreak of World War I, it was apparent that the loyalty of members of this official Islamic establishment was to a large extent

[56] For Algerian views of cultural history, see 'Ali Dabbuz, *Nahda al-Jazair al-haditha wa thawratuha al-mubarika* (Algeria's Modern Renaissance and Her Sacred Revolution), Algiers, 1965; and the anticipated third volume of Bilqasim Sa'adallah, *Tarikh al-Jazair al-thaqafi* (The Cultural History of Algeria).

perfunctory, and that many of them still looked to the Middle East for religious and intellectual leadership. Further, their popular influence in Algeria was quite limited compared to that of the independent marabouts, upon whom the French came to rely more and more.

After World War I, establishment 'ulama were still to be found for posts in the official clergy, but their prestige would continue to dwindle. Theirs was what the French would condescendingly call "*un Islam du bon ton*," learned, even erudite, but in a stiffly classical way, open to modernity, but mainly in the sense of politely nodding approval. By the 1920s, as an Islamic reformist movement took shape outside the official establishment, it had become a relic.

Structure of the Study

As we move into the details of the study, it is important to bear in mind the types of sources used, and how they affect the character of the chapters. Ironically, the sources available become more uneven as one progresses over time, for the records of the civilian side of the Algerian administration have been less effectively preserved and organized than those of the military regime, which, by the 1870s, was being confined to more remote areas of the High Plains and the desert. Because French colonial rule up until the end of the nineteenth century worked so effectively to undermine the political and cultural identity of Algerians, there is little material by them, in published form, before the 1890s.

The first chapter will be concerned with establishing the geographical and historical foundations of the study, particularly in explaining the differences in patterns of religious leadership, and in relations between religious leaders and the state, between East and West. It will also outline the stages in development of state intervention in judicial affairs, drawing on what sparse reports we have concerning the Ottoman and early colonial periods.

Chapter 2 focuses on judicial affairs in one key area, Mascara, which had been the center of 'Abd al-Qadir's state. It is based primarily on the records of the majlis of Mascara in the years just prior to the first colonial state intervention in 1856, and it provides a key to understanding why that intervention would provoke a crisis. It allows us to explore in depth the character of the sharifian elite of the Mascara region, and the role of Islamic law in social and economic life.

Chapter 3 is concerned with a social milieu which contrasts sharply with that of Mascara: the major cities of Algiers and Constantine. It draws on the records of the civil Bureaux Arabes, which provide a

wealth of social and economic data from the early 1850s up until their dismantlement in 1858. Through this and other material, we are able to gain important insights on the character of the urban elite, and we will see a link between the nature of Islamic law, as administered by the urban qadis, and the individualistic character of urban social life.

In Chapter 4, we move to the ideas of the prominent figures in the Algerian Muslim judiciary, especially as reflected in their responses to questions of law posed by the French in three areas where the French felt that they had grounds for criticizing Islamic practices: slavery, the position of women, and the treatment of orphans. Their responses belie the allegation often made by the colons that all Algerian religious leaders were uncompromisingly conservative. It will also be shown that the French themselves often failed to back up those changes which were suggested, and that they were more concerned with promoting stability than with working for change.

Chapters 5 and 6 deal in chronological fashion with events during the years 1854 to 1869, based on records of the military administration and the records of debates in advisory councils at the provincial level (the Conseils Généraux). Because detailed records are available for the local and regional levels, it is possible to focus quite effectively here on the impact of changes introduced by the colonial regime, particularly in terms of the social and political tensions in which they resulted. Chapter 5 treats the crisis in the appeals courts in the West, for which the ground was laid in the study of the Mascara majlis in Chapter 2. It shows how French opponents of an independent Muslim judicial system were able to capitalize on the crisis within the appeals courts to push through their dissolution. Chapter 6 explains how the dissolution of the majlis contributed to resentments which fueled a rebellion in 1864-1865. It then examines how, in the wake of this rebellion, the 'ulama pressed their case for a return to greater autonomy in judicial and educational affairs. The result was a temporary concession on this question, combined with a very thoroughgoing bureaucratization of the system.

The impact of bureaucratization is examined in Chapter 7, where we begin by looking quantitatively at the patterns of recruitment and promotion. Here again we find a clear difference between the Constantinois and the rest of Algeria, for in the former there was a greater degree of both upward and geographic mobility. This will be seen to have importance in Chapter 8, when we discuss political mobilization in the Constantinois.

We also take a qualitative look at the Muslim judicial officials, through portraits of some of the most distinctive groups, the details

of which are drawn from the personnel files of the colonial administration, and from biographical material in Arabic.

In Chapters 8 and 9, we return to a chronological approach, and we enter a period for which the sources are more uneven and more diverse. On the administrative side, one no longer finds the continuing records of correspondence which served as the foundation for Chapters 5 and 6. Rather, we find files on particular incidents, and, in one critical case, the Constantine riots of 1887, only newspaper reports. One also begins to find a good deal more published material in Arabic and French, written by Algerian Muslims. This is a period of decline in central administration control, and of growing cultural and political assertiveness on the part of the Algerian Muslims.

Chapter 8 is concerned with the Muslim courts as a political question in the 1880s, and the interlinked questions of political rights and conscription. It looks at the mobilization of the notables in the Constantinois in response to the colons' attacks on the courts, and it considers the political position of the qadi and the notables in the Algerian colonial town.

Chapter 9, covering from 1892 up to World War I, describes the final stages in the building of the official Islamic establishment in Algeria, as the French added on an intellectual and religious wing modeled on the lines of the judicial one. At the outset of this project, there was hope among Algerian Muslim leaders that this might prove the occasion for a sincere dialogue between the French and the Algerian Muslims, but this hope was to be sorely disappointed. The hollowness of dialogue was illustrated by the commission for the codification of Islamic law, composed mainly of French Islamic law specialists. This code was to be the final crown for the rationalized Islamic legal system, but it was a crown which was never to be formally put in place. Even twenty years after independence, the codification of family law remains a somehow intractable problem in Algeria.

In observing the construction of the official Islamic establishment, one learns a great deal about Algerian society, and about the nature of the French colonial state. But to fully understand its historical importance, and to bring its principal features out in relief, one needs to look at it in a long-term and comparative perspective. This will be the task of the conclusion.

Chapter 1

THE GEOGRAPHICAL AND HISTORICAL CONTEXT AND THE LINES OF INSTITUTIONAL CHANGE

To provide the foundations for this study, we need to begin by looking at the pattern of relationships between Muslim religious leaders and the state in Algeria, and then to consider how these were related to the working of judicial institutions in the precolonial period, and to outline how they will affect the main lines of institutional change in the colonial period. In the first part of this task, we will be concerned with the unity of the system, or the lack thereof, and with the autonomy of religious leaders within it.

In the introduction, a distinction was made between two levels at which religious unification can take place: that of baraka, or divine grace, and that of the shari'a, the religious law. Sharifian genealogies, tracing descent from the Prophet, are the element which permits unification at the level of baraka. This unification can take place under the control of a ruler, as was the case in sharifian Morocco, or it can be independent from him, and in opposition to him, when groups claim sharifian status on their own, and gain independent recognition for it in a local base. Baraka can also be fragmented, divided among a multitude of local saints and their descendants, called marabouts, who work out their relationship with the ruler individually.

Unity at the level of the shari'a is embodied in the Muslim judicial system, where the ruler has some control, through the appointment of judges, but where the religious scholars, who are the final arbiters of the shari'a, exercise a degree of autonomy.

To understand the differing patterns of religious leadership in Algeria, and how they affected judicial affairs, we need to begin by looking at the geographical foundations.

1.1 Contrasts Between Eastern and Western Algeria

There is a saying in North Africa that Tunisia is a lamb, Algeria is a wolf, and Morocco is a lion. This conveys well the sense in which Algeria is a transitional zone between its two more easily character-

ized neighbors. The great empires of medieval North Africa had their centers of gravity in the plains of Morocco and along the coast of Tunisia. Algeria tended to be a zone of rivalry between these centers. When smaller political units emerged in the thirteenth century, they divided Algeria between East and West.[1]

It was only with the arrival of the Ottomans in the second decade of the sixteenth century, and the building of Algiers into a well-fortified port, that Algeria began to emerge as a unified polity, with its present eastern and western frontiers. But even after three centuries of unity, there remained important differences in social patterns between East and West. This should not be seen exclusively as a matter of Moroccan and Tunisian influence, for there were important geographical, ecological, and economic factors which help to explain it.

One can find in mid-nineteenth-century administrative reports references to the "theocratic" West and the "secular" East of Algeria. Read in context, what these terms convey is the dominance of sharifian aristocracies in the West, and the dominance of urban influence in the East.[2] Material factors help to explain this, but do not provide a complete explanation.

It must be made clear to begin with that the frame of reference for this study is northern Algeria, a region known as the Tell, a narrow strip of land along the Mediterranean coast some 1,100 kilometers long, and varying in width from 350 to 400 kilometers. The central area, around the city of Algiers, is dominated by the Kabylia massif, whose people speak a Berber dialect. The Kabyles were notoriously recalcitrant to central government control and, though they were strong Muslims, they followed their own customary law. The French continued this policy by not naming qadis to the Kabylia, and for this reason it will not have a significant place in this study. Our attention will be concentrated on the West—roughly from the region of Miliana to the Moroccan frontier—and the East, from Sétif to the Tunisian frontier.

An important area of contrast is relief. The East is more mountainous than the West, and the Eastern mountains are higher. The natural corollary of this is that the East gets more rain, and that it is more heavily forested. In 1929, of 435,000 hectares officially classified

[1] For a summary of this period, see Jamil Abun Nasr, *A History of the Maghrib*, Cambridge, 1971.

[2] This distinction is developed by Augustin Berque in "Esquisse d'une histoire de la seigneurie Algérienne," *Revue de la Méditerranée*, 7 (1949), pp. 206-302, and 415-429.

as forest, 417,000 or 95 percent was in Eastern Algeria, the most important area being the cork oak forests in the littoral massifs.[3]

The key factor in the West is irrigation. For the precolonial West was dominated by two cities which depended to a large extent on irrigated agriculture. These two cities, Tlemcen and Mascara, occupy similar ecological niches, facing the mountains on one side, and small but fertile plains on the other.[4] In the colonial period, the French carried out extensive dam building and irrigation projects in the West, especially in the valleys of the Chélif and the Mina, and they established prosperous colonial agricultural centers in the regions of Sidi Bel Abbès and Orléansville.[5]

Annie Rey-Goldziguer, in her thesis on the disagregation of traditional Algerian society in the 1860s, links the relative strengths and weaknesses of rural resistance to geographical characteristics. The interior irrigated plains of the West lent themselves well to urban-based economic exploitation. This intensive parasitic exploitation seriously undermined the cohesion of rural communities in the West, while in the East, with its densely populated mountain refuges, the Algerian character remained intact, the communities cohesive. Hence Eastern Algeria was better able to resist the colonial intrusion.[6]

I would like to suggest a somewhat different reading of the data, stressing the dominance, in the East, of a single city. Constantine does not rely on intensive irrigation. As one looks out over the city walls, even today, one sees dry, monotonous, rolling hills. It is perhaps this very lack of an easily exploitable base which led the inhabitants of Constantine to spread their economic runners far and wide into the mountains and desert.

The industries of precolonial Constantine—most importantly tanning—drew labor and primary products from widely scattered points in the hinterland. And, during the prosperous reign of Salah Bey, in the late eighteenth century, government-sponsored construction projects attracted a sizeable contingent of laborers from the countryside. It was not only workers who were drawn to the city, but also scholars, who came to study and teach in the madrasas, or to enter

[3] For general coverage of Algerian geography, see Augustin Bernard, *L'Algérie*, Paris, 1929.

[4] Annie Rey-Goldziguer, "Royaume Arabe et désagrégation des sociétés traditionnelles en Algérie," unpublished dissertation, University of Paris, 1974, p. 66. This work has been published as *Le Royaume Arabe: la politique algérienne de Napoléon III, 1861-1870*, Algiers, 1977.

[5] On this region, see Xavier Yacono, *La colonisation des plaines du Chélif*, 2 volumes, Algiers, 155-56.

[6] Rey-Goldziguer, "Royaume Arabe," pp. 58-70.

into the service of the bey as judges or secretaries or religious officials. In short, while the Constantine beylik squeezed resources out of its subjects, it did so in ways which created a wide network of bonds of interdependence, economic and political and cultural, between the provincial capital and its hinterland.

By contrast, the West is made up of semi-isolated cogs—Miliana, Tlemcen, Mascara, and Oran—and one could argue for adding to this group Algiers and Médéa. In the Western beylik, the separate cogs competed for regional supremacy, but none ever achieved it. Further, the Ottoman hold over the mountain regions of the West—the Dahra and the Ouarsenis—and over the desert of the South Oranais, seems to have been more tenuous than Constantine's hold over the Petite Kabylie and the oases of Biskra and the Souf.[7]

In the sphere of relationships between politics and religion, the critical factor in the West lay in the emergence of sharifian aristocracies during the Ottoman period, a subject on which I will elaborate in Chapter 2. They arose in the intensively cultivated plains around Tlemcen and Mascara. One factor in this was doubtless the easy availability of an agricultural surplus. But politics was also a critical factor, since these groups' assertion of a claim to sharifian genealogy contained an implicit challenge to the authority of the Ottoman state.[8]

In the East, the situation was simpler and more symmetrical, with the lines of political and religious authority radiating out from the capital city of Constantine. Too, in the East, there tended to be a clear distinction between political and religious leadership whereas, in the West, the aggressive sharifs of Mascara tried to combine political and religious roles in the Moroccan manner. It may have been a factor of considerable importance that foreign trade flourished in the East, under the monopoly of the state, since this helped to make the capital a center of both economic and religious attraction.[9]

The strength of sharifian aristocracies around the principal urban

[7] There was a major revolt launched from the Petite Kabylie in 1803, but there was not the sort of chronic rebellion faced by the Oranais beys in the early nineteenth century. The best demonstration of the close urban-rural ties which existed in the East lies in the temporary migration from both the mountains and the desert to Constantine.

[8] The relationship between the importance of religious leadership and the severity of disputes over power is suggested by Fanny Colonna in "Saints furieux et saints studieux," *Annales, économies, sociétés, civilisations*, 35 (1980), p. 650; and also in Peter von Sivers, "The Realm of Justice: Apocalyptic Revolts in Algeria (1849-1879)," *Humaniora Islamica*, 1, 1973, pp. 47-60.

[9] P. Masson, *Histoire des établissements et du commerce français dans l'Afrique barbaresque (1660-1793)*, Paris, 1903; and Muhammad al-'Arbi al-Zubairi, *Al-tijara al-kharijiyya li-l-sharq al-jazairi* (The Foreign Trade of Eastern Algeria), Algiers, 1972.

centers of the West had two important corollaries. One was that there was not a strongly established order of 'ulama, as there was in Constantine, although in the last decades of Ottoman rule, after the recapture of Oran from the Spanish, there was an effort to build one up.[10] The second is that there was no pole of attraction like Constantine which could draw independent marabouts into the political and religious mainstream. As a result, these men, in the poorer mountain and desert areas, were more concerned with establishing their own independent bases of power, and building up alliances through Sufi tariqas. This was the source of major rebellions led by the Darqawa and Tijaniyya brotherhoods against Ottoman rule in the late eighteenth century and early nineteenth century.[11]

The Precolonial State and Religious Education

An important illustration of these patterns lies in the role of the Ottoman state in educational affairs. The period of greatest prosperity in the late Ottoman era coincided with the reign of Salah Bey of Constantine (1771-1791), who was able effectively to consolidate the state trading monopoly, and who carried out a number of ambitious projects, from building schools and mosques, to encouraging the construction of water-powered mills, to draining swamps in the plain of Bône. He was very much the enlightened despot of the eighteenth century, in a distinctively North African style.[12]

The Turks never came to dominate quite so effectively the Western beylik. The most serious problem was that the region's major port, Oran, was under Spanish occupation until 1792. And the Oranais had fewer prospects for trade at this time than the better-watered East. While their capital was at Mascara, from 1701 until the reconquest of Oran, the Western beys lived in uneasy alliance with powerful local

[10] The importance of scholarly production by 'ulama associated with the Oran makhzan is evidenced in Bilqasim Sa'adallah, *Tarikh al-jazair al-thaqafi* (The Cultural History of Algeria), volume 2, Algiers, 1981.

[11] Jamil Abun-Nasr, *The Tijaniyya: A Sufi Brotherhood in the Modern World*, London, 1965; and B. G. Martin, *Muslim Brotherhoods in Nineteenth Century Africa*, Cambridge, 1976, pp. 42-45.

[12] On the political history of the Constantine beylik, see Vaysettes, "Histoire de Constantine sous la domination turque," *R.S.A.G.H.*, 11 (1867), pp. 241-352; 12 (1868), pp. 255-392; and 13 (1869), pp. 453-620; and Hajj Ahmad al-Mubarik "Kitab tarikh Qsontina" (Book of the History of Constantine), trans. A. Dournin, *Revue Africaine*, 57 (1913), pp. 265-305.

tribes, most notably the Hachem confederation, who dominated the Eghris Plain just outside Mascara.[13]

After the reconquest of Oran, the beys came to rely more and more on two "makhzan" tribes, the Douair and Zmela. These were heterogeneous assemblages of loose families and fractions, united only by their subordination to the bey. The beys' reliance on these makhzan tribes was strikingly different from the Constantinois practice of forging alliances between the bey and tribal chiefs through marriage.

For our purposes, the most interesting facet in the history of the Constantine beylik lies in the religious policy of Salah Bey. It was, in brief, to encourage education and to bring education under closer government surveillance. The first aspect is well known. Salah Bey ordered the construction of numerous mosques, the most famous of which is Sidi al-Kittani, in the city of Constantine.[14]

A less well-known aspect concerns the habus endowments. According to a report of 1858, Salah Bey had submitted provincial habus revenues to central control. He created a general overseer (wakil) who was to control the accounts of each mosque.[15] Previously, habus had been administered by individual wakils, who were not accountable to the bey. How far this policy was carried is open to question. The report suggests that it was limited to the city of Constantine and its immediate environs.

Limited though it may have been, this policy met with a hostile reaction. As Vaysettes puts it in his monograph on Constantine under the beys: "The reforms introduced by this prince in administration, and above all in the area of primary education, although they were inspired by devotion to public welfare, ran counter to certain prejudices, and posed a menace to certain individual interests."[16] The injured parties Vaysettes identifies as a "certain caste of marabouts."

Two of the most often-recounted stories of the Salah Bey period involve incidents pitting the bey against the marabouts. One of them, called Sidi Muhammad "The Crow," had the unseemly habit of launching into violent diatribes against the ruler. For his misbehavior, he was put to death. But when a crow ominously circled over

[13] See G. Yver's introduction to Daumas, *Correspondance 1837-1839*, ed. G. Yver, Algiers, 1912.

[14] For an example of encouragement to rural education and religious life—the building of a mosque in the tribal territory of the Eulma (Sétif)—see F. Rens.: Messaoud Ben el-Medani, in Dossier C. M. Eulmas, 16 H 6.

[15] Div./Cst. to GGA, 19 February 1858, in 1 KK 32.

[16] Vaysettes, "La domination turque," 1868, p. 368.

the mortal remains of this saint, Salah Bey is said to have built a shrine for him in penitence.

Sidi Ahamad al-Zawawi, shaikh of the Hansaliyya brotherhood, also crossed with Salah Bey, but fared better. He was able to take refuge in the mountains, and when one night the bey dispatched an expedition to carry out a surprise attack against him, the troops were confounded by Sidi Ahmad's spell, and spent the whole night wandering in circles just beyond the city's gates.[17]

There are indications that the bey of Oran sought to pursue a policy of educational centralization. Once the capital had been transferred to Oran, a madrasa was established, and it was richly endowed. When the French expropriated the building (in order to turn it into a stable) and the attached gardens and orchards, they estimated the total value at 150,000 francs.[18] However, by 1830, the Oran beys had had little time to assert their preponderance in the field of religious education. They had been plagued by chronic revolts, and they clearly faced an uphill battle against local educational centers in Tlemcen, in the mountains of the Beni Snous, in the vicinity of Mascara, and in Mazouna, a town in the Dahra.

The Marabouts and the Secular Chiefs

The East/West contrast is also evident in rural political leadership. The great chiefs of the East were predominantly what was termed juwad, or "military nobles," the best known of whom were the Muqranis (near Bordj Bou Arreridj), the Ben 'Ashur (most notably Bu 'Akkaz) of Ferdjioua, and the Ben Gana clan of Biskra.[19] The political leaders of the Oranais—aside from those of the makhzan tribes—were predominantly of a religious character. And, once the beylik had fallen, it was from the religious-political elite of the Mascara sharifs that 'Abd al-Qadir recruited many of the cadres for his new state.

The forces which kept the Eastern marabouts within a more or less strictly religious role can be seen in the case of one of the most notable of them, Mawlay Shaqfa, whose zawiya was in the territory of the Beni Ider, in the rugged hill country south of Djidjelli. In 1850, before the French effectively controlled the region, they appointed the son of the shaikh of the zawiya, Lhaousin, as qaid, or chief, of

[17] *Ibid.*, p. 369. For more on Sidi al-Zawawi, see Mubarik, "Tarikh Qsontina."

[18] Div./Oran to GGA, 4 August 1849, in 22 S 1.

[19] See Charles Feraud, "Notes historiques sur les tribus de la province de Constantine," *R.S.A.G.H.*, 12 (1869), pp. 1-68.

the region, evidently in the hopes that this would channel Mawlay Shaqfa's baraka in the right direction. Lhaousin was none too tactful as a qaid, and the prominent juwad chiefs of the region, Bu 'Akkaz and Ben 'Azzaddin, encouraged dissidents of the Beni Ider to oppose him and his father. The dissidents then raided Mawlay Shaqfa's flocks and pillaged his house.

The point being made, Ben 'Azzaddin offered his good offices to secure the return of the stolen beasts and property, but he refused to allow the shaikh and his son to come to the market place in his territory and arrest the culprits. In a display of ill humor (and perhaps for safety's sake) Mawlay Shaqfa moved out of Beni Ider territory, and went to live in an area directly under the control of Ben 'Azzaddin. In effect, he was denying to the Beni Ider the benefits of his baraka, and his other more mundane services—mediation, presiding over rituals, education—until he got his way.

However, the dissident Beni Ider set definite conditions for his return. They would welcome him back to his zawiya, but they would not let him return to his burj, or fortified house.[20] The burj was a symbol of Mawlay Shaqfa's aspiration to political power, his desire to protect himself not just with his baraka, but with crenelated walls. These were pretensions which neither the local tribal leaders nor the neighboring juwad chiefs could tolerate. But they are willing to return his property, and let him live in peace in his zawiya, as long as he would stay within the bounds of a religious role. In the West, both beylik and tribesmen had to yield more ground to ambitious marabouts, united in a sharifian aristocracy. And, after the colonial invasion, they would have a dominant role to play in the resistance.

1.2 The Judicial Process and State Intervention

There are two images of traditional justice in North Africa, an urban one, associated with the 'ulama, and a rural one, associated with the marabouts. Islamic literature and history are replete with anecdotes concerning the relations of urban qadis with despotic rulers, on the one hand, and the unruly masses, on the other. Shaikh Sidi 'Amar al-Wazzan, a Constantine legist of the beylik days, explained the problem in a letter to the bey rejecting the offer of a qadiship:

> A qadi who wants to please the crowd exposes himself to losing the good things of both this world and the next, and even so, he cannot satisfy all interests, so much do ambitions divide at this

[20] Cercle/Djidj., Reports, February to December 1850, in 33 KK 50.

> time the inhabitants of the city. These people are contrary and difficult to appease, no matter how many concessions one makes to them.[21]

The marabout is typically seen as the arbiter of intertribal quarrels. When men of rival tribes are engaged in a dispute over such crucial matters as irrigation or pasture rights, or a murder, their only alternative to armed conflict is to resort to the neutral mediation of a marabout. Often, this process required negotiation between the disputants, for there would be several marabouts from whom to choose. In this free-market situation, a marabout had to have a keen political sense, and a strong reputation for piety, qualities which, one assumes, went hand in hand. The marabout had no coercive power at his disposal, only the threat of invoking a divine curse on those who gave false testimony or who refused to submit to a judgment. Before agreeing to mediate a case, a marabout would require that the disputants promise in advance to abide by the terms of the judgment.

This idealized image of maraboutic mediation I have borrowed from a report on justice in the oases of the far South in the early 1900s,[22] a setting in which there was as yet little state intervention. In the Tell, however, all but the most inaccessible regions had long been subject to state intervention, with the official appointment of qadis by the beys.

The simple naming of a qadi did not necessarily bring with it radical change. In gauging its impact, one needs to consider the extent to which people might continue to settle their disputes through alternative channels, such as traditional mediators or village councils. Any number of factors might have a bearing on this: the cost of litigation, what law was being applied, the nature of the procedures, the accessibility of the court, and the character of the judge.

In a colonial setting such as Algeria, it is of course important to ask whether litigants shunned the jurisdiction of the qadi because he had been appointed by the French. But this is a question which is difficult to judge, since the informal jurisdiction left no records.[23] The one occasion which I will discuss, in which there was a strong reaction against the qadis, represents a reaction against the increasing

[21] Cited in Vaysettes, "La domination turque," p. 299.

[22] Cmdt. Militaire des Oasis Sahariennes (Col. Laperrine), Rapport sur l'organisation de la justice musulmane dans les oasis sahariennes de Gourara, Touat, et Tidikelt, 11 January 1904, in 17 H 8.

[23] My impressions on the basis of statistics collected by the French on cases brought before the qadis' courts is that only in very remote areas where communications were very difficult was the qadi really bereft of a clientele.

intervention of the state, per se, and the fact that the state was an alien one simply compounded this reaction.[24]

The initial stage of intervention was symbolic. For example, in the 1890s, the Sultan of Morocco had named various marabouts of the Timimoun oasis as official qadis, though Morocco's hold over the region was strictly nominal.[25] The point was to lay the symbolic basis to legitimize Moroccan claims to the oases, a procedure which the marabouts were quite willing to submit to, once they realized that French intervention was imminent. Similarly, in the 1840s, when French control over the Tell was still insecure, they resorted to largely symbolic intervention. The Bureau Arabe of Sétif, for instance, lured marabouts out of their mountain redoubts in the Petite Kabylie by offering them official qadi's seals. Those whom the French deemed particularly important were given special large model seals in deference to their amour propre.[26]

The second stage of intervention can be termed political, and it is focused primarily on the appointment and dismissal of judges. This power, in theory, is used to uphold the law, and to prevent abuses by the qadi. But, in practice, it is often used by the ruler to intervene in local politics, playing off one faction against another. The pervasiveness of factional tensions also helps to explain a rather different characteristic of the system as it operated in precolonial times: the great flexibility of the appeals process, which could also be appropriately termed the consultative process.

While the appointment and dismissal of qadis tended to be used by the ruler as a tool to take advantage of factional conflicts, the flexible character of the appellate level can be seen to reflect a recognition that the state must not become completely ensnared in these factional conflicts, and that with the most serious ones it needs to promote their resolution through consensus.

Appeals were handled by an institution called the majlis, or assembly. There seem to have been no fixed rules for the composition of a majlis, aside from the requirement that the members should be prestigious and accomplished legists. This ambiguity allowed for intervention on the part of the ruler, in the selection of majlis members. But it also permitted him to gauge the political complexity of the case, and arrange the majlis in such a fashion that its verdict would

[24] See discussion of reactions to the dissolution of the majlis in Chapter 6.

[25] Chef de l'Annexe de Timimoun (Capt. Dinaux), Étude sur l'organisation de la justice musulmane, in 17 H 8. Pashas were sent out to the oases as representatives of the Sultan, but the Moroccans did not control the oases militarily.

[26] Subdiv./Sétif to Div./Cst. 17 December 1853, in 40 KK 9.

be credible, or at least difficult for the litigants to reject. This involved a recognition that most judges were inherently biased, or vulnerable to pressures from some particular quarter, and the assumption that the fairest, most effective decision could be arrived at only through mediation. This mediation could run two ways: on the one hand, between the disputing parties, each of whom might find some allies within the majlis, and, on the other hand, between the ruler, represented by officially appointed qadis and muftis, and the community, represented by the other legists.

Thus the system, at its upper levels, was concerned with substantive justice, interpreting the law through a consensus, more than it was with formal justice, applying the letter of the law. This character of the appeal process is consonant with what Max Weber termed qadi justice.[27]

A natural corollary of flexibility at the appeals level was the lack of a clearly defined jurisprudence, such as would be produced by a system with a clearly defined hierarchy of appeals. The French, with their obsession for formal rules and procedures, had little appreciation for the flexibility of the majlis system. Too, their lack of sensitivity to the political dimensions of legal conflicts may have made it difficult for them to see the importance of flexibility. Their overriding concern of course was with making land available for purchase, and ill-defined legal procedures were an obstacle to this. One could not very well buy a piece of land when one was not sure who was the legal owner.

It was the French who introduced the final stage of intervention: bureaucratization. By this I mean the introduction of formal rules in every aspect of judicial activity, the establishment of a formal hierarchy of appeal, the payment of salaries, the recruitment and promotion of judges on the basis of standardized examinations, and a rule of avoidance, which kept judges out of their home districts. A symbol of this was the spacial segregation of justice in a courthouse, while before it had often been rendered at the market place or in the judge's own house.

There are two points where we should be interested in the impact of judicial bureaucratization. One is in the disputing process itself, for where disputes are seen in political terms, especially as a power contest between two agnatic groups, highly formal procedures are not likely to be practicable. Moreover, formality usually meant high costs in time, money, and energy. With appeals to French courts,

[27] See the discussion of "qadi justice" in the introduction.

costs and frustration and confusion would climb to still greater heights, with the help of interpreters, lawyers, and lawyers' touts.

The second area of impact is on the judges themselves, who have to accept new ways. Here, the most significant problem was geographic mobility, for leaving one's home could mean adjustment to a new way of life and climate, and it prevented one from supervising one's economic and social affairs at home. Similarly, willingness to move could be seen as an indication that a man no longer felt tightly bound to a home base, and was coming to identify with a wider area—the region, or even the nation.

A man's social status, whether he was an 'alim, or a marabout, or a sharif, had no clear bearing on how he adapted to bureaucratization of the judiciary, except in the incidental way that one had to be educated to become a judge, and that education usually ran in families of religious character.

Ottoman State Intervention in Practice: the Tribulations of an Algerian Qadi

The complex interplay of state intervention and tribal or factional rivalries, which characterized the Ottoman period and the early stages of French rule, is best illustrated through the story of Muhammad Ben Bu Diaf, a Constantinois qadi of the early nineteenth century. His life story was recorded in 1850, in a remarkable article by the resident French Arabist in Constantine, Cherbonneau.[28]

Bu Diaf was born in the Awlad Khalid fraction of the Segnia, a large tribe living to the south of Constantine. At age fifteen, he went to study in the Zaytuna, the great Islamic university of Tunis. After some ten years of study, his father called him to Constantine to serve as naib, or assistant to the qadi—who, one would assume, was either his father or a close friend of the family. Some time later, he was appointed qadi of the Segnia, and the neighboring Zmoul, and given the official seal and diploma of investiture by the bey. Once in office, he was approached by a group of minor tribal leaders, who sought to buy his favor. However, being "a man of study and knowledge," he rejected the offer.

These men then considered how they could avenge the affront. Could they accuse him of impiety? No, for he faithfully performed his prayers and ablutions every day in front of his tent in full public

[28] E. Cherbonneau, "Notice biographique sur Si Mohammed Ben Bou Diaf, Muphti de Constantine," *Journal Asiatique*, 4ème série, tome 15 (1850), pp. 275-289.

view. And word among the poor had it that "alms fell from his hand like rain." So the plotters raised the specter of ja'ala, the corrupting gift.

As Cherbonneau so well explains: "We have to admit that the trap was well laid. Prevarication can easily be hidden beneath an exterior of virtue and austerity: the accusation seems to be proven in advance by the very lack of proofs." And he adds with lament: "Muslim society, I mean modern society, has taken upon itself the task of self-destruction through calumniation."[29] This propensity for calumniation had a name in the local patois: "shaitana"—to do the devil's work.

Fortunately for Bu Diaf, he had a protector in the person of the current bey, Ahmad the Mamluke. Yet, "one easily adjourned vengeance in this Muslim land, where revolutions followed on one another's heels, and power soon passed from one set of hands to another." Ibrahim the Cretan, hard-bitten qaid of the Harakta, had sworn that if he were to become bey, his first act would be to take Bu Diaf, and "make mincemeat of him."

In 1237/ 1821-2, the wheel of fortune turned, and Ibrahim seized power. Consummate politician that he was, he fulfilled his campaign promises, but only in part. He seized Bu Diaf, and threw him into prison, but then ransomed him to his protectors. Once free, Bu Diaf went directly to Algiers, where one day the Pasha convoked a majlis and asked Bu Diaf to join it. In the majlis session, he proved to be so eloquent and learned that the Pasha was greatly impressed, and thus offered him a qadiship in Médéa.

But Bu Diaf, longing for home, returned instead to his native Awlad Khalid. There his presence was betrayed to the bey, and he had to take refuge in the Aurès mountains until yet another change of regime in Constantine brought Hajj Ahmad to power and Bu Diaf back to favor. In the late years of the beylik, he served as qadi of Constantine's satellite town of Mila, and then as mufti of Constantine. He died shortly before the fall of the city to the French in 1837.

From Islamic to Colonial State Intervention

Qadis under the colonial state experienced some of the same woes as Bu Diaf. In particular, they continued to be subject to attacks for faults both real and imagined, including attacks from colon mayors. But in many respects, their situation would be different.

[29] *Ibid.*, p. 277.

One important difference was that, by the late 1870s, an aspiring colonial qadi would not go off for ten years of study at the Zaytuna. Rather, he would be required to attend one of the three official médersas, where he would study with teachers hand-picked by the French, and for only three years. These schools were established by the French in the 1850s to channel students away from both the rural zawiyas in Algeria, seen by the French as centers of sedition, and from the prestigious Islamic universities of Tunis, Fez, and Cairo.[30] Until the change in French policy in the 1890s, these schools were to be both low in caliber and narrow in focus, being exclusively concerned with the training of judicial officials.

Second, the colonial qadi would not have been invited, on the spur of the moment, to sit on an important majlis session. Under the French, the majlis was given a rigid definition and fixed membership. After 1860, they were to have only a nebulous consultative status, which bore no resemblance to the traditional character of the majlis. Under the colonial system, after 1860, litigants could always appeal to a French court for a definitive, enforceable decision. Further, these consultative majlis were composed entirely of qadis, while the traditional majlis had given a voice to independent 'ulama who were not at risk of losing their positions.

Third, the qadis' own activities would be much more closely regulated by formal sets of rules on such matters as procedure, the written format of judgements, the payment of fees, and so on. Some of these rules could be exceedingly trifling, and they surely impressed upon the qadi's mind that he was a servant of the state, and had no authority independent of it. This was a lesson which Bu Diaf's son learned in 1852, when serving as qadi of the Segnia. He was dismissed for allowing talibs (literally, students; in this sense, independent scribes) to prepare marriage contracts on their own, without the authorization of the Bureau Arabe.[31]

As trivial as these rules might have been, the man who mastered them gained a strong position for himself, above all in his ability to protect himself from political harassment by a local chief, or, for that matter, a colon mayor.

The Constantinois, with its well-established pattern of ties between rural religious leaders and the capital, was to prove itself

[30] Yvonne Turin, *Affrontements culturels dans l'Algérie coloniale; écoles, médecines, religion*, Paris, 1974. For criticism of the médersas from a nationalist point of view, see 'Abd al-Malik Murtad, *Nahda al-adab al-'arabi al-mu'asar fi-l-jazair* (The Modern Arabic Literary Revival in Algeria), Algiers, 1969, pp. 24-25.

[31] Div./Cst. to Subdiv./Cst., 5 January 1852, in 1 H 9.

adaptable to French efforts to create a bureaucratized judiciary. But, at the same time, with its strong 'ulama traditions, it had the greatest potential for resistance to French designs on the autonomy of religious leaders, especially in the sphere of education. The West was to prove less prepared to adapt to the imposition of formal rules, especially in matters of appeals. But, once the bureaucratized judicial system was imposed, Western legists showed less concern with the question of autonomy, and they would not have a voice in regional politics. Fortunately for them, the rule of avoidance was never strictly adhered to by the French,[32] so that it was possible in the end to combine the fruits of bureaucratic position with the prestige of local reputation.

[32] The reason for this is that as the jurisdiction of the qadi was narrowed, his revenue was reduced, and it was thus difficult to persuade qadis to move away from home.

Chapter 2

SAINTLY JUSTICE: THE MAJLIS OF MASCARA, 1853-1856

Gharis kul dum bi-wali
wa kul dalf bi-wali
Eghris—every dwarf-palm a saint
And every branch a saint.
—attributed to Sidi Ahmad Ben Yusuf

An effective way to move marabouts out of the rarified atmosphere of theoretical discussion down into the context of a lived reality is to observe them in action as judges. For the historian, this means, where possible, sifting through the masses of legal documents which they produced. This chapter is concerned with one quite extraordinary collection of documents, the register of the Bureau Arabe qadi of Mascara and his majlis, for the period 12 Ramadan 1269/18 June 1853 to 1 Shawal 1272/5 June 1856.[1] The register comes to an end with the formal establishment of the new majlis created in accordance with the decree of 1 October 1854.[2]

Such detailed material from the period immediately before large-scale French intervention in judicial affairs is important in and of itself, since it provides detailed evidence of how a "traditional" institution worked, so that we can avoid having to put together a picture on the basis of flimsy assumptions derived from theory, fragmentary evidence, or received ideas. Coming from Mascara, the register has a special importance, since this had been the center of 'Abd al-Qadir's resistance movement, and since it was to become the site of the most important majlis crisis in 1858.

I will begin with a discussion of the history and social structure of Mascara, then move to an analysis of the organization and personnel of the majlis, and finally to an analysis of how the cases coming

[1] The register is under the côte 30 JJ 335. In the inventory it is mistakenly labelled as "Correspondance du cadi du Bureau Arabe de Mascara."

[2] The new sovereign majlis was inaugurated in Mascara on 1 June 1856. See B.A.M./Msc., Report—April-June 1856, in F80 490. The majlis prior to this time consisted of the group of fuqaha presided over by the Bureau Arabe qadi.

before the majlis reflected patterns of interaction and tensions within Mascaran society.

2.1 Mascara Under the Beys

The town of Mascara is located in the eastern Oranais, some fifty miles southwest of the coastal town of Mostaganem, on the southern slope of the Beni Chougran range. It commands the Eghris Plain, which became a major vineyard center in the late nineteenth century. As I have pointed out in Chapter 1, Mascara's geographic position is much like that of Tlemcen, which also lies at the junction of a mountain range and a small, intensively cultivated plain.[3]

Like Tlemcen, which was the capital of the Zayanid dynasty (1236–1551), Mascara was a natural political center. It had been the home of a Zayanid garrison, and was capital of the western beylik from 1701 to 1792, when the Ottomans moved their capital to Oran, which, with some assistance from a timely earthquake and the French Revolution, had been reconquered from the Spanish.

Under Ottoman rule, the tribes of the Mascara vicinity came to serve as "makhzan tribes" or auxiliaries to the Ottoman military. The Hachem, who occupied the Eghris Plain, furnished fighting contingents, while other groups from the surrounding hills were assigned to non-combat services: the Beni Chougran furnished baggage escorts, couriers and the like; the Atba Djellaba guarded the beylik's flocks. Only as one moves to the southern and eastern fringes of what became the cercle of Mascara does one find the bottom of the political chain, the ra'ya or subject tribes—such as the Sdama—who were, as the French put it, "taillable et corvéeable à merci." Finally, there were two maraboutic tribes—the Awlad Sidi Daho and the Awlad Sidi 'Amar Ben Douba—who had a special status as "vassals or allies" of the bey.[4] Presumably they rendered service as mediators, religious officiants and educators and, one imagines, prayed for the bey's tax columns as they marched out to squeeze the last duru out of the wretched ra'ya. In brief, the inhabitants of the core area of

[3] On Mascara under the beylik, see G. Yver's introduction to *Correspondance du Capitaine Daumas*, Algiers, 1912; or, by the same author, "Mascara," in *Encyclopedia of Islam*, 1936, pp. 314-315.

[4] Louis Rinn, "Le Royaume d'Alger sous le dernier dey," *Revue Africaine*, 42 (1898), pp. 7-13. "Makhzan tribe" here is used to refer to those tribes which furnished military service in lieu of certain taxes. Normally, in the context of the colonial Oranais, it refers to the Douair and Zmela, the tribes which furnished the bulk of the province's native administrative personnel at upper levels.

Mascara under the beylik were relatively privileged, and were tied fairly closely to the makhzan.

However, Mascara was not an ideal site for the Ottomans, as is evidenced by their transfer to Oran. One can surmise several of their possible objections: Mascara was far from the Moroccan frontier, thus hampering operations in that critical region; its inland position made communication with Algiers difficult; it was sandwiched between turbulent tribes to the North in the Dahra, and in the mountains and desert to the South; and the Ottomans' relation with the Hachem confederation, who dominated the Eghris Plain, was one of uneasy coexistence. In Oran, they were safer from local (though not from foreign) dangers, and were able to establish loyal client tribes, the Douair and Zmela, on newly conquered land in the vicinity.[5] Had the Bey of Oran elected to remain in Mascara, the history of that province in the 1830s probably would have taken a quite different course.

While Oran may have been a more defensible town, the Ottomans' move there seems to have unleashed a wave of uprisings in the Mascara region, first in the Ben Sharif rebellion in the early 1800s, centered in the Dahra, and then in the Tijani rebellion in the 1820s. The Ottomans managed, with some difficulty, to put down these rebellions. But they seem to have relied in both cases on their tenuous alliance with the Hachem, who eventually rallied to their side, one suspects more out of antipathy for the rebels (and perhaps because they had failed to gain the upper hand in the political direction of the rebellions) than out of devotion to the beys.

One of the most important figures of the Hachem confederation was 'Abd al-Qadir's father, Mahi al-Din, the shaikh of the Zawiya Bel Qaitna (usually rendered in French as "Guetna"). According to 'Abd al-Qadir's son, Muhammad, the rebel Ben Sharif "did not succeed in his enterprise because he was detested by (Mahi al-Din), and for this reason, the people detested him." Twenty years later, Mahi al-Din's son was proclaimed Amir by the tribes of the Mascara region.[6]

[5] The transfer occurred at a time when the central government in Algiers was reasserting its control in the provinces. This tendency is most clearly marked by the deposition of Salah Bey of Constantine.

[6] Muhammad Ben 'Abd al-Qadir al-Jazairi, *Tuhfa al-zair fi tarikh al-jazair wa al-amir 'Abd al-Qadir*, ed. Dr. Mamduh Haqi, Beirut, 1964, pp. 115-116. On strained relations between the beys and the Hachem, see Senatus Consulte: Metchatchil (1868), in M66, Dossier 197. The Metchatchil, a tribe located just outside the city of Mascara, and a part of the Hachem confederation, were created in 1805, in a re-organization imposed

2.2 'Abd al-Qadir's State: Its Relation to the Social Structure of the Mascara Region

There has been and continues to be considerable debate over the Amir 'Abd al-Qadir and his enterprise in state-building and anti-colonial resistance. Much of the debate, however, has been focused on what is all too easily made an artificial question: was the Amir a "traditional" tribal leader, or was he a bona fide "nationalist"? Yet scholars have generally neglected the question as to what there was about the social and political milieu of the Eghris Plain which facilitated his rise to power. The answer to this question should give us some new insights as to the sources of 'Abd al-Qadir's strengths and weaknesses, and conceivably provide a fresh draft for the smoldering debate, at the same time as it provides essential background for an analysis of the register.

While some new perspectives on 'Abd al-Qadir have been emerging from the Algerian side,[7] Western scholars have confined themselves largely to European sources, and have often simply tried to transpose Algerian phenomena into Western terms. Gallisot, for instance, takes it on faith (from Lacoste, Nouschi, and Prenant) that the "nobility of the sword" had been in decline since the eighteenth century, because of the "crisis of landed society," and that this facilitated the rise of a religious leader such as 'Abd al-Qadir. Once Gallisot has traced the causal chain into the religious sphere, he seems to stop asking questions. In sociological explanation, religion all too often seems to explain everything. One Algerian sociologist who is not satisfied with this approach, Fanny Colonna, suggests that it may be useful to see religious imagery as "imaginary projections," and

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by the Bey in an attempt to weaken the Hachem. On some details of the rebellions, see F. Rens.: Mohammed Mehdi MAHDAOUI, in 16 H 14, Dossier C.M. Cacherou (1898).

[7] See in particular Mahdi al-Bu 'Abdalli, "Adwa 'ala tarikh hayat al-amir 'Abd al-Qadir qabl tawliatih min khilal mudhakaratih allati sajalaha fi qasr Ambwaz" (Light on the life of the Amir 'Abd al-Qadir before his rise to power through the memoirs which he recorded at Amboise castle), *Majallat al-tarikh* (Algiers), 1 (1975), pp. 51-68. He points out that most scholars have pictured the intelligentsia of the Ottoman period as "reactionary, narrow-minded fuqaha, and incapable, affected udaba (men of letters)." Yet he finds that the memoirs composed by the Amir in exile at Amboise, with the aid of his old khalifa, Mustafa Ben Tuhami, picture the major school of the Eghris Plain, the Rashidiyya, as a center of considerable intellectual activity. The scholars there were particularly concerned with tawhid (theology), and they clashed with the 'ulama of Tlemcen over a particular commentary on Sidi Khalil's *Mukhtasar*.

calls on us to look at how new developments in religious discourse may be related to the affirmation of new social relationships.[8]

Sharifism and Social Stratification

Indeed, what were the projections? And who was doing the projecting in this case? How did Mascarans present themselves to outsiders such as Daumas and Roches,[9] who became the standard Western sources on 'Abd al-Qadir, and why did they so present themselves? We are best off turning to Algerian sources to see what they have to say about social and political organization and leadership in the Mascara region. 'Abd al-Qadir's son, Muhammad, in *Tuhfa al-zair* (his history of the life of the Amir) speaks of the leaders who met to swear allegiance to the Amir as follows: "There met together the ashraf, the 'ulama, and the 'ayan (notables) of the tribes." The first group to swear allegiance to the Amir were the ashraf *and* the 'ulama.[10]

It is significant that both these groups came first, and that, though they act as one group, two terms are employed to describe them. This point may at first seem recondite, but it is key. The significance has to do with a protracted debate over genealogy and social precedence which had preoccupied Ottoman Mascara. It was curiously similar, in certain ways, to the later debate as to whether the Amir possessed credentials as a bona fide nationalist. Understanding it requires some background information.

The confederation, which came to be known as the Hachem (previously they had been called the Beni Rashid), began infiltrating the Eghris Plain in the fourteenth century, pushed out of the South by the Beni Hilal invaders. Over the course of two centuries, they squeezed out the previous occupants and consolidated their hold over the fertile plain.[11] This consolidation would thus coincide with the arrival of the Turks in Algeria. While the details of this period are vague, we can at least hypothesize that this consolidation of control over a

[8] P. Gallisot, "Abd el-Kader et la nationalité algérienne: interprétation de la chute de la régime d'Alger et des premières résistances à la conquête française (1830-1839)," *Revue historique*, 233 (1965), pp. 339-368. On imaginary projections, see Fanny Colonna, "Cultural Resistance and Religious Legitimacy in Colonial Algeria," *Economy and Society*, 3 (1964), pp. 233-263.

[9] On Daumas, see his *Correspondance*. Léon Roches is best known for his *Trente-deux ans à travers l'Islam*, 2 volumes, Paris, 1884-1885.

[10] Al-Jazairi, *Tuhfa al-zair*, pp. 155 and 158.

[11] On the history of the Hachem, see E. Lespinasse, "Notice sur les Hachems de Mascara," *Revue Africaine*, 21 (1877), pp. 141-151.

fertile plain by a vigorous, warrior tribe from the South led to a more or less gradual modification of that tribe's social and political organization. In particular, we should look for signs of stratification, as old tribal solidarities broke down, and an elite attempted to assert its claim to a disproportionate share of resources and status.[12]

It is in this context that we can understand why a scholar by the name of Shaikh Bu Zid Ben 'Abd al-Rahman al-Tajini compiled a work in the seventeenth century on the notables of Eghris, in which he paid concern both to their noteworthy accomplishments, and to the question of who was a sharif, a descendant of the Prophet.[13] Such works were apparently very much à la mode in the Maghribi literature of the day. They were, as Alfred Bel saw it, symptomatic of a "new social order" being organized within the tribes.[14] The manuscript made the rounds of the region's notables, and many expressed their disapproval: this work, they felt, did not pay enough attention to certain notables' relationships with the "most illustrious men of the past." Thus, they concluded, editing was in order, and the job fell to one al-Juzi Ben Muhammad, of the Awlad Sidi 'Abd al-Qadir Ben Khedda—who were, significantly, the Amir's lineage. Al-Juzi, it appears, accepted the doctrine that a sharifian genealogy can be established on the basis of the testimony of two 'adils, or bona fide witnesses, a doctrine that invites would-be ashraf to suddenly remember genealogical links to the Prophet. Needless to say, al-Juzi's version met with great acclaim.

Yet it too met with criticism—from an eminent scholar of the late eighteenth century, Abu Ras al-Nasiri, who is best known for his eulogy of the Bey Muhammad Uthman in celebration of the conquest of Oran. He was a sort of court scholar, and we can assume that he acted in this matter as semi-official spokesman of the bey. He decided that Bu Zid's original text was "insufficient and obscure," and set about revising it himself. Until his death in 1823, he guarded the revised version closely, allowing only trusted individuals to see it. With his death, it passed into the hands of his son, Muhammad, of whom a French officer would later remark, "He did not enjoy full use of his intellectual faculties."[15]

[12] For an historical reconstruction of such a process, see Brian Spooner, "Politics, Kinship, and Ecology in South East Persia," *Ethnology*, 8 (1969), pp. 139-152.

[13] 'Abd al-Rahman Ben Ahmad al-Tajini, "Kitab 'aqd al-juman," trans. L. Guinn, *Revue Africaine*, 35 (1892), pp. 139-152.

[14] See Alfred Bel, *La religion musulmane en Berbérie: esquisse d'histoire et de sociologie religieuse*, Paris, 1938, pp. 382-400.

[15] Subdiv./Msc. to Div./Oran, 10 July 1873, in 30 JJ 133.

The remark seems apt, for Muhammad lent out the manuscript to some men from the Awlad Sidi Daho, a tribe which counted some of al-Juzi's most adamant proponents. The manuscript was never to be seen again. An enraged Hasan Bey had the offenders arrested, and later ransomed them for 4,000 reals. To pay the ransom, the notables of the Eghris met together to divide it into quotas, which were then collected by squads of armed horsemen from the local tribesmen.[16] Not long thereafter, the same notables would meet to proclaim the bay'a, the oath of allegiance to the Amir 'Abd al-Qadir. They would call themselves, equivocally, ashraf and 'ulama.

In fact, they were awlad sayyid, the descendants of local holy men, mostly of Berber origin, or, loosely speaking, marabouts. Why were they not content with this status? I can suggest the following explanation: within the compact region around Mascara, there were a large number of maraboutic lineages, who probably felt a common interest in asserting their existence as a dominant stratum. "Maraboutism," as a social ideology, does not seem to allow one to conceptualize a unified stratum. It forms part of the vision of a segmentary society, in which a saintly lineage occupies a position interstitial to opposed tribal segments, not as a superior social stratum.[17]

Alfred Bel's study of the Beni Hediyel near Tlemcen illustrates how sharifism, as a social ideology, acts to explain and re-enforce the horizontal boundaries of a stratified social order. The ancestor of the Beni Hediyel ashraf, Sidi Mas'ud al-Sarhani, came to the region of Tlemcen, fleeing persecution in Fez, probably in the sixteenth century. One of his grandsons, Sidi Ahmad al-Sharif, founded the sharifian fractions of the Beni Hediyel. There were, in 1928, three "prin-

[16] L. Guinn, "De la suppression d'un manuscrit: Anouar el-birgis fi sharh aqd el-nafis," *Revue Africaine*, 31 (1887), pp. 72-80. A contrasting example is provided by the descendants of Sidi Muhammad al-Huwari, patron saint of Oran, whose sharifian status was confirmed by Shaikh Bu Ras, and thus, one would imagine, was acknowledged by the beylik. E. Destaing, in "Un saint musulman du XVe siècle: Sidi Mhammed el-Houari," *Journal Asiatique*, Tenth Series, 8 (1906), pp. 295-342, and 385-438, cites a late eighteenth-century source on the question of this lineage's sharifian status. It is not mentioned in the earlier sources which he used, and the name suggests that he was of Berber origin. This case reinforces the impression that there was a close relationship between claims to sharifian status, and social and political changes in the eighteenth century.

[17] This issue emerges more sharply in Algeria, where there was no sultan to officially distribute sharifian status. There was an official naqib, or syndic, of the ashraf in Algiers, but his influence was probably limited to the capital. Groups in rural Algeria seem to have claimed sharifian status as a function of their own specific goals and situations. For a case from Eastern Algeria, see Justin Pont, "Les Amamra," *R.S.A.G.H.*, 12 (1868), pp. 217-240.

cipal" sharifian fractions descended from Sidi Ahmad through the male line, and two of lesser status descended through the female line. Below these were two fractions of "commoners" descended from the Beni Hediyel who originally inhabited the territory. Finally, there was a fraction descended from a slave of one of the early ashraf. The stratification can be envisioned as follows:

PRINCIPAL ASHRAF
Fraction A
Fraction B
Fraction C

SECONDARY ASHRAF
Fraction D
Fraction E

COMMONERS
Fraction F
Fraction G

BLACKS
Fraction H

According to Bel, there was some intermarriage between the "Primary" and "Secondary" ashraf, but not across the solid lines between ashraf and commoners, or commoners and blacks.

In this respect, the legends about founders of sharifian lineages become quite interesting, and here Bel hastens a little too easily to say that this patriarchal society paid no interest to the women in the story. Sidi Mas'ud al-Sarhani's woes began when a vicious Berber chieftain had the governor of Fez demand Sidi Mas'ud's daughters for him in marriage. The saint refused. He and his sons were kept in chains for forty days and subjected to such fiendish tortures as being made to walk on thorns. Finally, Allah delivered them, a son of Sidi Mas'ud slew the governor, and the family fled, virtuous sharifian maidens in tow, to the region of Tlemcen.[18]

A similar theme emerges in stories about Sidi 'Ali al-Sharif of Mascara. It happened that one Mansur, chief of Mascara, coveted a noble (sharifian) woman, but that she rejected his advances. Harassed, she came to Sidi 'Ali to complain. He tried to reason with Mansur, but the latter would not listen. A little later, he suddenly died.

Then, heedless of such an obvious lesson, some brutish tribesmen

[18] Bel, *La religion musulmane*, pp. 392-397.

came pursuing another chaste sharifa who had taken refuge at Sidi 'Ali's. As they were about to enter his house, they found the earth opening up beneath them, and they fell into an enormous flaming crevice. Fortunately, Sidi 'Ali relented, having driven the point home, and the tribesmen went away, humble and penitent.[19]

In all these stories, the miracles are adornment. They portray a simple moral. Ashraf do not marry their women to non-sharif political chiefs or to common tribesmen. Chiefs they will strike dead; to tribesmen, if properly penitent, they will show mercy. The legends both identify social boundaries, and indicate a potentially strong political conflict.

Other sharif stories recorded in the al-Tajini manuscript tell us of comradeliness among the saints. Sidi 'Ali al-Sharif and Sidi Daho, for instance, never seemed to tire of complimenting each other. In one story, when two sharifs were quarreling, the master of one of them came along and persuaded his disciple to kiss his opponent. Thereafter, they were fast friends.[20]

What makes Mascara distinctive is that the ashraf not only formed dominant groups within individual tribes, but that they formed—or were in the process of forming—a stratum or class, with at least a minimal degree of cohesion and unity. They not only did not marry their women to common tribesmen or to members of the Ottoman military elite, but they *did* marry their women, to a certain extent, to each other across lineage or tribal boundaries, but within "class" boundaries.

To accurately gauge the extent of marriages between saintly lineages would be impossible from the limited data in my possession. However, if we take the case of the Amir's family, it is clear that they favored both the "ideal" father's brother's daughter marriage and strategic marriages with other maraboutic lineages.

'Abd al-Qadir himself was born of a marriage between a man from the Awlad Sidi 'Abd al-Qadir Bel Mukhtar, and a woman from the Awlad Sidi 'Amar Ben Douba. His first wife, Khaira, was the daughter of his father's brother, 'Ali Bu Talib. His brother Mustafa married Khaira's sister, Zuhra. But another brother and a sister married out of the lineage. The Amir's paternal cousin, Ahmad Ben 'Ali Bu Talib, was reported by Daumas (in 1839)[21] to be married to a sister of the

[19] Al-Tajini, "Kitab 'saqd al-juman," pp. 265-266.

[20] *Ibid.*, pp. 267-269.

[21] Daumas, *Correspondance*, ed. G. Yver, appendix on 'Abd al-Qadir's family and prominent personalities. For a genealogy of the Bu Talib family, see 1 E 237. The Amir's lineage is also referred to as Awlad Sidi Qada Ben Khedda.

Amir; but in 1854, when he was on his way to take up a post as qadi of Sétif, he was reported to be married to a woman from the Awlad Sidi al-Jilani Ben 'Amar.[22]

Tayib Ben Mukhtar, a member of the majlis and a prominent qadi of the Mascara region under French rule, is referred to by the Amir himself as "our paternal cousin" (ibn 'ammna), and the French refer to him as a close relative. Yet General Daumas, who served as French ambassador to Mascara in the late 1830s, noted no kinship between them. And when Tayib Ben Mukhtar came before the majlis—for killing a paternal cousin—he was said to be from the Awlad Sidi Ahmad Ben 'Ali. And another source tells us that he was related by marriage to members of the Awlad Sidi Fraiha Ben Khatir.[23]

The essential point is that he was one of the Amir's principal contacts in the Mascara region after he had gone into exile in Damascus: whether real or fictitious in genealogical terms, the link was no doubt forged for political reasons. And one might note in passing that real kinship did not seem to guarantee harmonious relations.

The weakening of tribal bonds concommitant with the development of stratification can also be detected at the lower levels of Mascaran society. A group called Awlad . . ., or Beni . . . (the children of . . . , the sons of . . .), in being so named, at least gave the impression of taking seriously the notion that agnation should be the guiding principle of social organization. By the same token, groups with names that do not refer to a putative genealogical forebear—which in practice usually are named after places of residence—may well hypothesize some common origin, but they would seem to have less than primordial concern with that origin, and to have admitted another organizational concept—place or territory. If we admit this argument, we can develop a crude means of gauging the strength of "tribalism" between different regions.

Within the cercle of Mascara, which was composed of the Eghris Plain and the surrounding mountain districts, of 33 "tribal" units, only 13—or 40 percent—had names including "Awlad" or "Beni." For the more remote cercle of Tiaret, 8 out of 10 are so named. In the coastal mountains of the cercle of Ammi Moussa, the count is 33 out of 61, or 54 percent. One might hope to find a low figure for the cercle of Tlemcen, since it is ecologically similar to that of Mas-

[22] Div./Oran to GGA, 2 June 1854, 1 JJ 10.

[23] See al-Jazairi, *Tuhfa al-zair*, p. 703; and 'Abd al-Qadir to Tayib Ben Mukhtar, 20 Muharram 1228/11 April 1871, in *Réveil de Mascara*, 4 September 1881. On ties to Awlad Sidi Fraiha Ben Khatir, see F. Rens.: Mohammad Ben Khatir, in 16 H 20, Dossier C.P.E. Mascara (1898). On the murder, see below.

cara, but the figure is 14 out of 25, or 56 percent.[24] Conceivably, Tlemcen remained more tribal since wealth there tended to be concentrated more in the hands of city dwellers than in those of a rural elite.

One could go on to argue that the Mascaran rural maraboutic elite combined the urban virtues of education and sophistication with rural ones—physical bravery, horsemanship, and combat skills—in a way that made them quite apt to assume leadership of a moderately complex, rural-based political organization.

I offer the above as a hypothesis to open up an avenue of further research—and also as a means of bringing alive what was, at first glance, dry, lifeless legal material. The implication of the arguments is that 'Abd al-Qadir's state-building enterprise was not a typical archaic tribal rebellion, but rather emerged from a social milieu in which a new organizational principle had begun to take hold, one which emphasized horizontal rather than vertical social divisions (without by any means obliterating the vertical divisions). This should help to explain how such an apparently novel political structure arose in the midst of a "tribal" society.

Also, one might note the timing of 'Abd al-Qadir's state-building enterprise. The Hachem had flirted with rebellion under the beylik, but had never openly embraced it. Only the intrusion of a colonial power seemed to create the circumstances which could galvanize the Hachem politically. The leaders of the Hachem had long sought to consolidate and legitimize their social superiority through sharifism, but, without institutionalized support to validate their status, this remained a pretension: they were not ashraf, but "ashraf and 'ulama." After 1830, however, they could pose as leaders of a holy and patriotic war. If 'Abd al-Qadir was quick to seize this political opportunity, he was, I think, slow on the ideological uptake, and conceivably the weaker for it.

The base of 'Abd al-Qadir's thinking was influenced by the Moroccan model, in which sharifism plays a predominant role. This model has, of course, proved quite durable in Morocco, a viable alternative to classic nationalist ideologies. However, in laying stress upon sharifism, 'Abd al-Qadir implied either clientship to the 'Alawite dynasty, or (eventually) the ambition to overthrow it—both problematic propositions.[25]

[24] The count is based on tribes listed in *B.O.A.G.*, 1860, for the division of judicial circumscriptions. This list and similar ones published in 1856 and 1867 are the most complete and convenient lists of tribal units available.

[25] A leading Moroccan chronicler, al-Nasiri, in his *Kitab al-istiqsa*, did not refer to

Further, the hauteur implied by sharifian pretensions, especially when they were so obviously pretensions, probably alienated a good many people, and gave ammunition to 'Abd al-Qadir's most serious rivals, the populist Darqawa, among whom one finds a dissident cousin of his, a man whose offspring were to proliferate in the ranks of the Muslim judiciary. (See Chapter 7.)

The sharifian pretension remained after the political collapse. 'Abd al-Qadir persisted in calling himself "al-Hasani"—the descendant of the Prophet through Hasan. Only in the next generation did the family adopt the nisba "al-Jazairi" (the Algerian).

2.3 Mascara Society: 1853-1856

By 1853, when the qadi's register begins, 'Abd al-Qadir and his state had been swept from the scene, and the French were in the process of consolidating their domination over the Tell. During the war, the Hachem confederation had suffered severely. The French had sequestered or confiscated a good deal of land belonging to the principal rebel leaders, and had expropriated other land, especially in the banlieue of Mascara, strictly because it was the land best suited to colonization, without compensating the former owners promptly or anywhere near adequately.[26]

The French had installed ostensibly loyal aghas and qaids. And they had stripped the marabouts of some of their former privileges, such as exemption from corvée labor. Thieves, murderers, and troublemakers were arrested, tried in French courts, sentenced to terms in French prisons, and occasionally executed by the quintessentially French guillotine. But in affairs of civil justice, they had not yet intervened extensively. It is here that we can observe, relatively untramelled, the internal social and political configurations of Mascaran society.

Within the judicial realm, the maraboutic elite of the region remained an important force. The institution which was central to their continued importance as a group was the majlis, or judicial assembly,

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'Abd al-Qadir with the standard honorific term for ashraf, but instead called him "*al-faqih al-murabit*" (the legist and marabout). See E. Michaux-Bellaire, "Les musulmans d'Algérie au Maroc," *Archives Marocaines*, 11 (1907), p. 35.

[26] See Subdiv./Msc. to Div./Oran, 23 February 1852, in 30 JJ 124. With the initial occupation of Mascara, the military had a great need for forage, and local tribesmen were allowed to graze their animals on this land after the forage had been taken. But, by the early 1850s, this land had been handed over to colons, so such a concession was no longer possible, and the tribes began to feel much more acutely the effects of the sequester.

which sat with the Bureau Arabe qadi. It was crucial to them in two ways: first, it was maraboutic fuqaha who sat on the majlis; and, second, since they were among the principal landowners of the region, the majlis was the forum in which they fought out the quarrels to which landed wealth so often gives rise, and they may have derived some advantage in their disputes with commoners by virtue of their monopoly on legal expertise and over judicial positions. While the majlis served, in normal times, to resolve local conflicts, it could, on occasion, serve as an organ for collective political pronouncements: it had been a "majlis" of leading 'ulama and ashraf who proclaimed the bay'a of 'Abd al-Qadir in 1832. Though leading figures of the bay'a majlis were no longer present, the lineages represented still had important roles in majlis affairs—in particular, the Awlad Sidi Daho, the Masharfi, and the Awlad Sidi Ahmad Ben 'Ali.[27]

From the written record of the majlis, it is clear that the maraboutic elite still insisted upon status distinctions. The mention of a maraboutic lineage usually incorporated the term "baraka" in the name—thus, for instance, "Awlad al-baraka Sidi Ahmad Ben 'Ali." One can even find doubly holy lines of descent, such as "Awlad al-baraka Sidi Ahsan Ben al-baraka Sidi Daho." The lineage or tribe name was often followed by an honorific formula, such as "radi allah 'anhu wa ardahu" (may God be pleased by him and please him) or "nafa'na allah bi-barakatihi" (may God benefit us with his baraka).

Also, individuals of maraboutic descent enjoyed the title of sayyid, and a few individuals of apparently intermediate status were referred to by the abbreviated form, "Si." Women of maraboutic origin were distinguished by the insertion of the term sayyid before their father's name—hence, 'Auda Bint al-Sayyid al-'Adnani. But the names of ordinary people, even qaids, were left unadorned. The mention of "ashraf" or "shurfa" is extremely rare.

To what extent the social prestige of the saintly families was reflected in economic power is very difficult to say. Some observations can be made, however, on the nature of maraboutic wealth. To wit, there appears to have been very little habus in the region. Habus is never mentioned in any of the cases brought before the Bureau Arabe qadi and his majlis; and the French reported finding very little habus in the region, the only major block being some 200 hectares attached to the Guetna, the zawiya of the Amir's family.[28]

[27] On the ba'ya, see al-Jazairi, *Tuhfa al-zair*, p. 158.

[28] According to the commandant of Oran, no land had been made habus in the subdivisions of Oran, Sidi Bel Abbès, or Mascara, since the Ordinance of 1844. Also,

There is a case reported in the archives of habus documents "surfacing," but this relates to a maraboutic lineage in the mountains of the aghalik of El Bordj, not the central area of the Eghris Plain. Some marabouts may have derived revenue from pilgrimages to the ancestral tomb, or from contributions from their religious clientele, but there is little trace of this in the archives.[29]

Rather, it was private property or milk which seems to have been most important to them. This property was private in the sense that it was alienable. However, wealthy maraboutic families seldom divided their land with the death of a family head, but rather maintained a corporate ownership—what the French called indivision. Yet this was an ideal rather than a rule. Property *could* be divided, and, when it was, Islamic inheritance law—which has a notorious leveling effect—was applied. Moreover, when a piece of land held in indivision was sold, ownership rights were determined by Islamic inheritance law. This would prove a major source of problems, problems doubtless exacerbated by the increased economic pressures generated by the colonial intrusion and the wholesale expropriation of prime agricultural land.[30]

2.4 The Institution: Personnel and Procedures

The register is, properly speaking, that of the Bureau Arabe qadi of Mascara. The jurisdiction covered the cercle of Mascara, whose population in 1855 was estimated at 76,000. As the term suggests, the Bureau Arabe qadi was a French creation. Its origins can be traced to the mid-1840s, when Bureau Arabe qadis were first used on an experimental basis in the Constantinois, and then quickly spread to the rest of the country.

The Bureau Arabe qadi was especially chosen for his loyalty to France, and, ideally, for his open-mindedness when it came to such legal reforms as the French might want to implement. He was at-

very little had been made habus in Tlemcen or Mostaganem. See Div./Oran to GGA, 22 October 1855, in 1 JJ 10. For summary inventories of habus, see "Biens Habous—Oran, 1850," in F80 1087, and Div./Oran to GGA, 4 August 1849, in 22 S 1.

[29] On the habus conflict, see Subdiv./Msc. to Div./Oran, 5 November 1857, in 30 JJ 126. The lineage involved was the Awlad Sidi Bu Amran. On a pilgrimage near Mascara in more recent times, see Émile Dermenghem, *Le culte des saints*, p. 216.

[30] On land tenure pattern among the Hachem, see B.A.M./Msc., Report—October-December 1861, in 24 J 8, which attacks the inequities and irrationalities of the system. On maraboutic land tenure, see Senatus Counsulte: Zoua (1867), in M66, Dossier 199; and Ouled Sidi Abdallah (1869), in *Mobacher*, 7 April 1869. In the latter tribe, some lineages maintained strict indivision, while others regularly divided inheritances.

tached to the Bureau Arabe of a cercle where he would advise the native affairs officer on legal issues.

He was to receive a salary of 1,200 francs a year—in the context, a fairly substantial sum. In principle, he was to judge appeals from tribal qadis (who were not, as yet, officially appointed in most cases), either judging by himself, or with a majlis convoked with the authorization of the Bureau Arabe chief. According to the provincial commandant of Oran, the Bureau Arabe qadis were "*gens de confiance*," and they "greatly help us to know and evaluate other [judicial] agents."[31]

Such an institution was not without its critics, especially among the colons and the French judiciary, who saw it as a means through which the military re-enforced their despotic hold over the helpless native population. Apparently their criticism of the institution was effective enough to lead to its gradual abandonment after 1856, in spite of repeated pleas on the part of the Bureau Arabe officers that they desperately needed such an assistant.[32]

While the arrangement may have facilitated abuse of power by the military, blatant interference was, I think, fairly rare. The French stood to gain very little through unabashed favoritism, while they stood to gain a great deal in posing as even-handed mediators. Most judicial conflicts were too minor for a busy officer to deal with—and his limited familiarity with Islamic law put him at a distinct disadvantage in judicial affairs. The Bureau Arabe qadi was probably more important as a symbol of French domination over the judicial process than he was an effective instrument for furthering the "despotism" of the Bureaux Arabes.[33]

The most important aspect of the institution was that it left the definition of procedures and structures up to the local Bureau Arabe chief—thus it could be adapted to local circumstances. In a remote, sparsely populated area such as the cercle of Teniet-el-Had, the result was a quite simple arrangement in which, each month, the three qadis of the vicinity would meet in the chef-lieu, site of a major

[31] Div./Oran to GGA, 2 August 1855, in 1 JJ 10. On Bureau Arabe qadis, see Div./Cst. to GGA, 9 January 1845, in 17 H 5; and Min. Guerre to GGA, 26 April 1845, in 17 H 5. The position may have been similar to that of bash qadi, which existed under the Amir.

[32] The strongest official criticism was in the Chasseloup-Laubat report, issued in late 1859, in *B.O.A.G.*, 1859, pp. 643-649. There are numerous pleas for continuation, for instance, Div./Cst. to GGA, 7 March 1857, in 17 H 5.

[33] Comparison of reports from different officers shows a wide variety of attitudes toward Muslim justice, but cases of direct intervention were rare. Pressure to tilt the scales of justice came much more from the native chiefs.

market, to handle important cases. Such a simple arrangement also seems to have prevailed in the case of Orléansville, which, though in a more heavily populated region, was a new town, without local institutional traditions.[34]

However, in Mascara, there were a large number of qualified fuqaha to draw from, and there was a long judicial tradition which, one presumes, has considerable weight in determining judicial forms and procedures at the time with which we are concerned. In the Bureau Arabe qadi's register, one finds numerous different arrangements, the common denominator of which was flexibility. The distinction which the French would make, between a single judge ordinary tribunal and an appeals court with several judges had no formal demarcation here. The difference between the court which handled petty affairs and that which handled major ones was rather one of who the shuhud, or witnesses were, and how many there were.

The term "witnesses" poorly conveys the meaning of "shuhud" here, for these were not people who offered evidence in the case, but rather legists who lent their moral reputation and political weight to the judgment. And it would be hard to imagine their doing so without actually participating in the judgment. Together, these shuhud make up what is called the majlis—a term whose meaning would be seriously altered by the application of the decree of 1854.

However, with data on the men who served as shuhud, one can distinguish between what might be called a "petty" majlis and a "grand" majlis. The petty majlis drew on a cast of characters limited in both number and distinction. At its head was the Bureau Arabe qadi, Tahar Ben 'Amr, a faqih in his early forties, from the Awlad Sidi Muhammad Ben 'Amr, a maraboutic fraction of the Haitia in the aghalik of El Bordj. His family reportedly enjoyed a "certain veneration." He seems, from all appearances, to have been rather nondescript, as is indicated by the modifier "certain" (as opposed to "great"). Later, he would be dismissed from his posts as qadi and majlis member in the "scandal" of 1858. He would briefly return to grace as a qadi in 1866-1867, only to retire once again to obscurity.[35]

The regular katib, or secretary of the majlis, Tahar Ben al-Mahfudhi enjoyed better coverage in the archives. The data suggest that he was from a maraboutic family with close ties to the old beylik. He came originally from Mascara, but fled at the time of the conquest

[34] B.A.M./T. el-Had, Report—January 1855, in F80 474. On Orléansville, see the register of the Bureau Arabe qadi, 72 II 25, which shows that the composition of the pre-1856 majlis was stable, comprising four regular members.

[35] Proposition of Tahar Ben 'Amr for qadi of Circonscription 45, Province of Oran, Subdiv./Msc. to Div./Oran, 8 November 1866, in 1 J 22.

to the vicinity of Oran, where he "submitted" in 1842. Two uncles, one on his mother's side, one on his father's, had served as qadis in the Mascara region in the late beylik period.

Like many former beylik servants, he attached himself to the French at an early date. Starting in 1842, when he was about twenty-five years old, and until 1845, he served as khuja (secretary) to the qaid of Tlemcen. The following year, he served as mufti of Tlemcen. He resigned this post to become "cadi al-trick" (qadi al-tirka—qadi in charge of inheritances) in Mascara; and in February, 1853, he became katib of the majlis.

Perhaps the most revealing note of all is that, in late 1855, he went on a trip to Paris with Muhammad Bel Qaid, qadi of Oran, to visit the Exposition Universelle. Bel Qaid, of whom I will have a good deal to say later, was a wealthy and prominent member of the "makhzan elite" of Oran, a group of men who had once been closely tied to the Ottoman government. Ben al-Mahfudhi's association with him, along with his long service under the French, puts him in the same group—the group which stood in opposition to the Amir 'Abd al-Qadir. Thus one might suspect that he was in ill odor with the maraboutic elite of Mascara, many of whom had paid dearly for their loyalty to the Amir, and some of whom, as we shall see, were on poor terms with Bel Qaid.[36]

The shuhud of the petty majlis were essentially minor figures. Muhammad Ben 'Amr was the paternal cousin of the qadi. Since he never held an official judicial post after 1856, one might well surmise that he was a man of few talents, who owed his position to kinship ties.[37] Muhammad Ben Shaikh al-Hafidh Bu Ras I have already spoken of; he was the son of an illustrious writer and scholar, but himself had insufficient wits to keep a politically sensitive manuscript of his father's out of the hands which would destroy it.[38] He would never rise above the post of bash 'adil in over twenty years of service.

Al-Hanifi Ben 'Abdallah was the only one of the three regular

[36] On Tahar Ben al-Mahfudhi, see the register of the Bureau Arabe qadi of Mascara (hereafter referred to as "Sijl"), 7 Rabi' II (103 D). Numbers in parentheses refer to my own cataloguing system. In this case, Ben al-Mafudhi cites a document of 1234/1818-1819, and refers to Muhammad Ben al-Tahar, a qadi, as his paternal uncle, and to al-Mukhtar Ben al-Makki, qadi of Qala'a, as his maternal uncle. On his early career, see Subdiv./Tlm. to Div./Oran, 4 September 1851, in 1 J 55. On trip to Paris, see Min. Guerre to Intendant Militaire/Marseille, 9 December 1855, in 17 H 6. For an impression of Ben al-Mahfudhi in Tlemcen, about 1846, see Abbé J.J.L. Bargès, *Souvenirs d'un voyage à Tlemcen*, Paris, 1859, Chapter 10.

[37] The kinship tie is cited in Sijl, 20 Ramadan 1269 (190 A), and elsewhere in the register.

[38] See above, note 16.

petty majlis shuhud who stood on his own. He was khuja of the Bureau Arabe, thus available as a shahid whenever the need arose. At this time, he was probably quite young; and in consequent service as khuja, he doubtless learned French, which later helped him to become a Muslim assessor at the Tribunal of Mascara and, in 1881, a native representative on the Conseil Général of the Province of Oran. He would serve as qadi of Mascara from 1886 until his death in 1892.

The shuhud of the grand majlis included some thirty men, some of whom appeared quite regularly, others only once or a few times. Most of them were—or eventually would be—qadis and 'adils. The only exception has to do with the witnesses at marriages and divorces, who were often simply family members, or in some way tied to the families involved.

Among the more interesting of the grand majlis members were the brothers al-Mahi and Muhammad Ben Ma'ashu. According to one source, their father was Muhammad Ben Tuhami, another member of the majlis, and qadi of Ahl Eghris; another relative had served as khuja under the Amir.[39] Muhammad Ben Ma'ashu served from 1852 as Bureau Arabe qadi of Saida, and regularly appeared at the majlis until an unfortunate turn of events put him behind bars. These events bear relating, for they convey the mood and color of the time, and remind us that some marabouts did indeed fit the stereotype of backwoods rabble-rouser.

It happened that in early May of 1854 a certain muqaddam of the Darqawa order (who had a reputation as rabble-rousers), one Hajj Muhammad Ben 'Abdallah Bu Jalal, who came from a maraboutic family "très vénérée dans le pays," attempted to launch a rebellion in his native tribe, the Yaqubia, where he gathered together the Darqawi brothers (ikhwan) and led a triumphal procession through the countryside, until he passed by the house of the qadi Muhammad Ben Ma'ashu, who was "something of a relative and friend." Ben Ma'ashu was apparently able to persuade him of the foolishness of the venture, so the would-be mawl-al-sa'a (Master of the Hour, or mahdi) ate his diffa (a feast offered by one's clients, a privilege which penurious marabouts were renowned for abusing) and went home. Whatever was meant by the cryptic "something of a relative and friend," it was serious enough to merit Ben Ma'ashu a trip to the penal island of Ste. Margueritte, and end his career as qadi.[40]

[39] See F. Rens.: El Mouffok ouled El Mahi Ben Maachou, in 16 H 20, Dossier C.P.E. Mascara (1898).

[40] Subdiv./Msc. to Div./Oran, 30 June 1854, in 30 JJ 124.

The family of 'Abd al-Qadir al-Jilani Ben Rukash offers a case similar to the Ben Ma'ashu's, that of a prominent judicial family who had been partisans of the Amir. Before the conquest, Ben Rukash's father had been qadi of the bait al-mal of Mascara; and his uncle Hajj 'Abd al-Qadir had been qadi of Oran, then mufti, and later became a muqaddam of the Qadiriyya brotherhood under the Amir. Ben Rukash served as khuja to the Amir; and a document in the register indicates that he fled with the Amir on the hijra, the exodus to Morocco, in 1845—though not before registering a complete set of his property claims.[41] Filing claims at the same time were his neighbors and fellow majlis shuhud, the Masharfis, a family claiming to be Idrisid ashraf, who had furnished 'Abd al-Qadir's first envoy to the Moroccan court.[42]

The connection between this outer circle of grand majlis shuhud and the Amir 'Abd al-Qadir is confirmed by the presence among them of a number of the Amir's real or putative relatives, such as Tayib Ben Mukhtar and his brother Muhammad al-Saghir. Hasan Ben Mustafa came from a collateral branch of the Amir's lineage which, in the paternal line, had separated from 'Abd al-Qadir's branch four generations earlier.

In summary, there is a clear distinction between the fuqaha of the grand and petty majlis. The latter were men who had been loyal to the Ottoman beylik, and later to France; the former had been closely associated, in numerous of the most important cases, with the Amir 'Abd al-Qadir. What this seems to suggest is that the majlis provided a framework in which the local maraboutic elite and the colonial administration—represented by Ben 'Amr and Ben al-Mahfudhi—could debate some of their differences. Since the French controlled the office of qadi, and it was the qadi who was alone responsible for pronouncing judgment, they had the ultimate say; but, at the same time, they consulted, more or less systematically, members of the "opposition."

2.5 An Analysis of the Register

What did this institution do? What kinds of cases did it receive, and how did it handle them? And of what value is such a register in looking beyond the majlis itself to wider questions of social history?

[41] See F. Rens.: Driss Ben Roukech MOUTAOUKIL, in 16 H 20, Dossier C.P.E. Mascara (1898). On land holding, see Sijl, 19 Dhu al-Qada 1271 (52 B). According to the sequester inventory in *B.O.A.G.*, 1857, this land was still under sequester.

[42] On the Masharfis, see E. Michaux-Bellaire, "Les Algériens au Maroc," pp. 34–35, and 46–48.

The simplest approach is to look for salient points, for cases which might be considered as either highly unusual or unusually common.

One measure common to all cases is the number of shuhud involved, and it is tempting to look for some principle which might explain the fluctuating composition of the majlis. A few distinctions emerge immediately. One can easily distinguish between the simple notarial act ('aqd), involving, for instance, the sale of an animal or estimation of compensation due for minor damage or injury, which involved only the qadi and the katib; marriages and divorces, which often involved shuhud from the families concerned, who were not necessarily fuqaha; and, finally, the dispute (khusuma), which often required a majlis of learned fuqaha.

However, in the case of disputes, it is clear that no simple rule can be found, for the normal composition varies little in number—from three to five shuhud are usually present, in addition to the qadi and the katib. The variation is much more in personnel than in numbers. The shuhud are drawn from a field of thirty fuqaha. However, there are a very few cases involving exceptionally large numbers of shuhud, and these require explanation.

Unusual Cases: the Majlis as Mediator

In one instance, a large majlis was convoked to consider a case of illegal consummation of a marriage:

> The representative (naib) of a woman named Amina complained that Mahi al-Din . . . had illegally consummated a marriage with her. Mahi al-Din's paternal uncle, acting as his representative, claimed that the marriage had been legally contracted by her father when she was young. He produces, in support of this, an act from the qadi of Oran, but in it, the name of the man is recorded as al-Jilani rather than Mahi al-Din. . . . Amina's father confirms that these names in fact refer to the same person. So the qadi rules that the marriage was valid, and that the testimony of the woman, which contradicts that of her father, should not be taken into account. The woman is divorced, and half of the sadaq, as well as the jewelry given to the woman on her wedding night, is returned to the man.[43]

The case was witnessed by seven fuqaha in addition to the qadi and katib. It does not, as one might expect for an unusually large majlis,

[43] Sijl, 4 Shawal 1271 (66 B).

involve a clash between important people or important groups. Rather, the issues involved are moral ones, since, at this time, the French considered child marriage to be among the most barbarous practices of Muslim society. (See Chapter 4.)

In the eyes of the fuqaha, however, the issue was merely a technical one: whether Mahi al-Din and al-Jilani were one and the same person. At the only point where they came close to dealing with what the French saw as the moral issue, they register a certain pique, proclaiming that the woman's testimony could not be considered. That such a large majlis was convoked for this case suggests that the decision to convoke it was taken by, or at the behest of, the Bureau Arabe chief. It also seems likely that he made the decision without fully understanding the case, perhaps in response to feigned moral outrage on the part of the woman or her representative.

In the case with the largest majlis—involving some twelve shuhud—the political aspect stands out, as does the brevity of the judgment, almost making one suspect that there was a correlation between the number of fuqaha assembled and the number of aspects of the case left unexplained.

> The honorable Agha Qaddur Ben Mukhfi possesses a mill called Abi Amran Ben Qaishu, and has long used it freely. But in early Shawal 1269 (July-August 1853), Muhammad Walid al-'Aaqib claimed that he had never sold his share in the mill, and that the Agha had confiscated it. Before the majlis, the Agha's representative, his katib, al-Sayyid Muhammad Ben 'Abd al-Rahman, shows an act written by al-Walid (?), may God have mercy on him, which says that the Agha bought the mill from al-Hajj al-Mukhfi Walid Baghdad, who bought it from Muhammad Walid al-'Aaqib. The majlis rejects the claim of the plaintiff, and rules that the mill is the Agha's property, and then that the defendant should pay the plaintiff twenty durus to placate him. The money is paid, and the plaintiff accepts it.[44]

I cannot prove that the Agha's document was a forgery, but I would not be at all surprised if this was the case. Forgery was a thriving industry at the time, as was milling, and one can easily imagine an association of the two activities. And certainly there would be no reason for the majlis to order a payment to placate a plaintiff, unless they felt that he in some sense deserved it.

In this case again, one can discern, in the background, a French

[44] Sijl, Mid-Shawal 1269 (187 B).

concern. For the issue was an alleged exaction on the part of a native chief, a matter about which the colon press never tired of harping. Under Ottoman rule, such cases of ordinary men bringing suit against aghas probably never arose, if the prevailing image of Turkish despotism is an accurate one.

However, as in the previous case, the fuqaha did not directly grapple with the "moral" issue; and here again the plaintiff appears to have failed to push hard on the issue. Perhaps he could not substantiate the claim of confiscation; perhaps he was intimidated; or perhaps he had not really understood that issue, but was simply taking cues from a European counselor, whose real interest in the matter was not to vindicate the downtrodden, but to acquire the mill.

The most important point, nevertheless, is that large majlis seem to have been a product not so much of conflicts within local society, as of perceived conflicts in values between that society and the colonial ruler. A few fuqaha could usually settle a conflict where all that was required was an application or clarification of the law. But it took a large number of them to present a convincing consensus to an external authority.

There is, however, a "large majlis" case, involving twelve shuhud, which prompts an addition to the above hypothesis. It involves a conflict between the Awlad Sidi 'Amrtash and the Awlad Sidi al-Hajj Ben 'Amr, both maraboutic lineages, but neither particularly prominent. The conflict was over a piece of land, owned by the former, in which the latter claimed a share through inheritance. They presented a document to back up their claim, but the majlis ruled that it referred to another piece of land, and, on the basis of testimony from several natives of the area, confirmed the ownership of the Awlad Sidi 'Amrtash.[45]

Here, the critical issue is not readily apparent, for similar conflicts were handled by much smaller majlis; and the contestants, though of maraboutic origin, were not important enough, in the eyes of the katib, to merit the ritual formulas used with more illustrious lineages. Although it is unlike any of the other Mascara cases, it does resemble one reported from the cercle of Tlemcen. In that instance, a majlis of sixteen members decided, by a vote of fourteen to two, in favor of a group who had occupied a piece of land for seventy-two years, against another, who produced a 174-year-old title.[46]

In both cases, the majlis did something quite unaccustomed: they rejected written documents in favor of oral evidence. In the vast ma-

[45] Sijl, 10 Safar 1270 (159 C).

[46] B.A.M./Tlm., Report—1853, in 1 H 10.

jority of cases, the Mascara majlis honored written documents; and this seems to have greatly facilitated the judicial process, for, as long as written documents were involved, a simple, explicit set of rules could be invoked, and a case decided without large-scale consultations or negotiations. It was only when such documents were of questionable validity, or when the consequences of their acceptance would lead to an acknowledged inequity (or run up against an overly powerful established interest) that the usual judicial machinery could not function effectively, and one had to turn to an alternative source of authority—the consensus of the fuqaha.

The abundance of written documents cited in the register, some of them dating back to beylik days, underscores points already made in the discussion of social organization. The society of the Mascara region cannot be understood as a typical "primitive" or "tribal" society, in which collective tribal interests outweighed individual ones, and in which marabouts were limited to mediating conflicts between collectivities.

Although I had set out with the hypothesis that the majlis served primarily a mediating function, I was forced to abandon it in the face of consistent evidence to the contrary. In most cases, the majlis adjudicated rather than mediated. Its judgments were not sophisticated legal masterpieces, but they were none the less judgments. This is, I think, quite consistent with the emergence of a dominant stratum, one of whose most important attributes was a quasi-monopoly of literate and legal skills.

The picturesque, folkish element is present, but rather rare, represented mainly by cases where the majlis brought the conflicting parties to a sulh, or conciliation. For instance, in one case, a woman claimed that a slave had struck her, and the slave insisted that it was the "people of the duar" (a small village or group of tents) who had done so. Thus it was decided that both parties should pay half the compensation due. In another instance, a woman complained that her husband had struck her, knocking out several teeth, and the qadi arranged a sulh, whereby her husband gave her two sheep to atone for his fault. And when an unwary buyer found himself with a horse which promptly died, he was able to claim eleven durus (he had paid nineteen) from the seller, and that man in turn was able to claim ten durus from the man who had sold it to him.[47]

The arrangement of sulh stands, in a sense, at the opposite pole from the "moral issue" cases. In both cases, the majlis can be seen

[47] The cases are respectively 19 Rabi' I 1270 (154 B), 15 Rabi' I 1270 (155 C), and 7 Dhu al-Hijja 1269 (176 C).

acting as a mediator. But, in the former, the cases could be mediated because they were so trivial or peculiar that only a sense of equity was needed; while, in the latter, large majlis were convoked to discuss cases, the issues in which involved the entire society, and were thus beyond the scope of an ordinary majlis. Mediation was possible in one case, necessary in the other, for there existed no conventional formula or pre-established set of rules for resolving the conflict. The same condition arose in the land dispute with the rejection of written documents. But most of the cases were of a conventional nature, and here we must shift to a different tack.

Common Cases and Salient Conflicts

The transactions and disputes brought by Mascarans before their Bureau Arabe qadi and majlis can be divided into four major categories: acts of violence, marriage and divorce, matters related to property in land, and those related to moveable property.

Most of the transactions and disputes fall into distinct patterns which are repeated over and over again, thus facilitating comparison and analysis. Admittedly, the picture obtained may be distorted through the process by which cases were selected to come before the majlis. But certain patterns indisputably emerge from the data, and they reflect both on the judicial process itself, and on social relations and conflicts. My major concern in analyzing these patterns is with distinguishing between the behavior of the awlad sayyid and that of the commoners, since it was among the former group that judges were recruited, and also because existing anthropological literature provides us with a model of the behavior to be expected from this group.

Acts of Violence

The awlad sayyid, or marabouts, are commonly said to be (besides being mediators, a matter covered above) non-combatants, and to marry within their class, or at least to prevent their women from marrying commoners. Their avoidance of fighting arises from their status as professional neutrals, their endogamy from a desire to keep their patrimony intact, and also to re-enforce their social distinctiveness. There have not, as far as I know, been studies concentrating on patterns of property dispute among awlad sayyid.

Concerning violence, Mascaran marabouts conform fairly closely to the expected pattern. They are virtually absent from the numerous claims over petty injuries, most of which probably arose in pasture, plowing, or harvesting disputes. But I suspect this had as much to

do with their being wealthy and distinguished as it did with pacifism being part of their identity: though some of them served as professional neutrals or mediators, many others had little or nothing to do with such a role, but as members of an elite they probably regarded involvement in common fisticuffs as being as undignified as the tasks in which fights usually arose—raising crops and grazing animals.[48]

However, when it came to the violence of passion, as opposed to workaday violence, the awlad sayyid were not significantly more saintly than other mortals. The most striking case is that of Tayib Ben Mukhtar, one of the most distinguished fuqaha of the region, and a cousin, at least putatively, of the Amir 'Abd al-Qadir. He allegedly killed his cousin, al-Hajj al-Hashimi Ben Sadiq, knocking him to the ground and thereby breaking his neck. Though he at first denied this, he quickly agreed to pay 500 francs in compensation, and then was treated to an unusually philosophical bit of moralizing on the part of the qadi Tahar Ben 'Amr.[49]

Marriage

In the happier area of marriage, the Mascara awlad sayyid behaved very much as expected, in that they married almost exclusively among themselves. Data gleaned from marriage acts show other distinguishing traits on the part of the awlad sayyid, as shown in Table 1. In brief, if awlad sayyid women often remarried, they must have been

TABLE 1
RELATION OF SOCIAL STATUS TO
BRIDE'S PREVIOUS MARITAL STATUS

Bride's Previous Marital Status	*Social Status of Couple*	
	Sayyid	*Commoner*
First marriage	10	14
Divorced or widowed	1	21

[48] In thirty compensation cases in the last eighty pages of the register, only six involve awlad sayyid.

[49] Sijl, 3 Shawal 1271 (66 A). The case was treated as one of conciliation, rather than one of *damm*, or blood payment, since qadis were, in theory, not competent to judge murder cases. In practice, cases involving political considerations like this one, or those in which there was insufficient evidence, were left to qadis.

doing so elsewhere than before the Bureau Arabe qadi. The more likely significance is that they seldom divorced, or that, once divorced or widowed, they found some obstacle to, or a lack of incentive for, remarriage.

A second distinction has to do with the payment of sadaq, the dower or "bride price" by the husband to the bride's family. In Mascara, sadaq payments" ranged from 600 Zayanid dinars to 2,000, most frequently being set at 1,000, half of it being paid before the wedding, and half delayed for ten years. Almost all sadaq payments were calculated in Zayanid dinars, while land sales, for instance, were transacted in French durus (one duru seems to have meant ten francs at the time, though now the convention is five anciens francs to the duru), or else in "Bu Madfa' " duru (Spanish currency?), which suggests that sums mentioned in marriage contracts may have been a figurative means of expressing a woman's "worth," rather than representing the exact amount of cash which changed hands. It is difficult to imagine, after all, that there was still much Zayanid money in circulation three centuries after that dynasty's collapse.

Also, there was a special sadaq, known as the "sadaq of al-wali al-salih (the true saint) Sidi Mhammed Ben Yahia," which was six durus, that is, a modest sum. This was evidently the poor man's sadaq, and Sidi Mhammed Ben Yahia was probably a man who had undertaken to reform customary marriage laws in the region. The intent of the reform may have been to bring those who were especially poor within the pale of Islamic law, but in effect it also stood as a mark of low social status, for the awlad sayyid shunned the device, as can be seen from Table 2. The deviant sayyid case here is, incidentally, not the same as in Table 1, though this "poor man's sadaq" does seem to have a relation to the bride's previous marital status, as can

TABLE 2
RELATION OF SOCIAL STATUS TO
TYPE OF SADAQ PAYMENT

Type of Sadaq	*Social Status of Couple*	
	Sayyid	*Commoner*
Sidi Mhammed Ben Yahia	1	14
Normal	10	21

be seen in Table 3. The awlad sayyid's tendency to pay a normal sadaq may reflect in part the fact that first marriages were involved, and it may also reflect greater wealth. But if this were true, one would hope that the difference in wealth would also be reflected in the amount of sadaq paid. In fact, however, the mean of sadaq payments (of those calculated in Zayanid dinars) is very nearly the same—981 dinars for the awlad sayyid, and 1,010 for commoners.[50] Thus one might suspect that considerations of dignity were involved in the normal sadaq.

An examination of marriage witnesses provides a somewhat more nuanced view of social relations. Groups of witnesses can be placed into four different categories: all sayyid, all commoner, regular majlis fuqaha, or a mixture of categories. The distribution is shown in Table 4. Here what stands out is that sayyid witnesses participated in

TABLE 3
RELATION OF TYPE OF SADAQ PAYMENT TO BRIDE'S PREVIOUS MARITAL STATUS

	Type of Sadaq Payment	
Bride's Status	*Normal*	*Sidi Mhammed Ben Yahia*
First marriage	19	5
Divorced or widowed	11	11

TABLE 4
RELATION OF SOCIAL STATUS OF COUPLE TO TYPES OF WITNESSES OF MARRIAGE ACT

	Types of Witnesses			
Couple's Status	*All Sayyid*	*All Commoner*	*Regular Fuqaha*	*Mixed*
Sayyid	6	0	3	2
Commoner	1	4	12	17

[50] This calculation excludes the anomalous case of the 2,000 dinar sadaq, discussed below.

the marriages of the vast majority of commoners, since they are present in both the "regular fuqaha" category and the "mixed" category. The latter category is particularly important, and it may be an indication of patron-client ties between commoner families and awlad sayyid, who lent their baraka to their client's marriage.[51]

But the most interesting case here is the anomalous one in which only sayyid witnesses were present at a marriage which I have placed under the rubric "commoner," though it really deserves to be placed in a category of its own. It is peculiar in that it involves a sadaq of 2,000 dinars, the highest recorded, and that this amount was paid all in one lump sum, rather than half at the wedding and half in ten years, as was the custom.

Both members of the couple were foreign to Mascara: the man, Muhammad "Mamish" Ben Zarq al-'Ain, was from Mostaganem; and the woman, Nafisa Bint Si 'Umar al-Haffaf Ben Hasan Khuja, was from an 'ulama family of Algiers. However, both were living in Mascara at the time of their marriage: probably Ben Zarq al-'Ain and Nafisa's father had come there on government service as soldiers or interpreters.[52]

It is also of interest that one katib—Muhammad Ben Mukhtar al-Tamimi—referred to 'Umar al-Haffaf as "Si," while the regular katib, Ben al-Mahfudhi, referred to him as "al-sayyid," but somewhat diminished the compliment by misspelling the gentleman's name, writing 'Amr, a common Oranais name, instead of 'Umar, which tended to be a Kurughli name. (Kurughlis were urban dwellers descended from Turks who married local women.) They further differed on the status of the witnesses, al-Tamimi calling them "Si," Ben al-Mahfudhi "al-sayyid."

Al-Tamimi tended, on numerous occasions, to be parsimonious in distributing titles, but it is only here that we catch him downgrading specific individuals who had been treated more generously by another katib, and thus betraying the key to his social vision. While the man who had been closely tied to the beylik, Ben al-Mahfudhi, was willing to concede the honorific term, "al-sayyid" to any man of learning or distinction, al-Tamimi, a representative of the maraboutic elite of Mascara, was concerned with agnatic credentials, and probably would not have countenanced a "bint al-sayyid" marrying a

[51] According to Michaux-Bellaire, "Les Algériens au Maroc," the ashraf had khaddam, or servants, who made regular contributions to them. In exile in Morocco, this practice continued, but weakened over time as patron-client ties weakened.

[52] Sijl, 4 Sha'ban 1271 (7 D), and Mid Dhu al-Hijja 1271 (40 A).

man such as Ben Zarq al-'Ain, who may have had a lot of money, but had no title and, moreover, a distinctively Berber nickname.

Indeed the confusion over status here might be construed as symptomatic of the emergence of a new social type, the geographically mobile government functionary who often came from a wealthy and/or prestigious family to begin with, and, in becoming a functionary and leaving home to pursue a career, tapped new sources of wealth and prestige. Like any self-conscious social group, they intermarried, but the high sadaq, paid in full, seems to reflect the newness of this nascent group-consciousness.

Divorce

Divorces are not nearly as convenient for analysis as are marriages: divorce and repudiation take place under a wide variety of circumstances, not all easily comparable; and there is no indication, in the written documents, of the amount of sadaq involved in the dissolved marriage, thus making it impossible to judge whether high sadaq contributed to making a marriage more permanent. And, finally, divorce, as a social situation, seems to have been less clear-cut than marriage, for the ambiguous "Si" appears in seven out of forty-three cases registered—thus it is more difficult to make accurate judgments about the social status of the couple.

Nevertheless, the data are sufficient to allow us to pursue the question raised above about the remarriage of awlad sayyid women. They do not show a marked tendency on the part of awlad sayyid to avoid divorce, though they do indicate a possible avoidance of khul' (divorce initiated by women) as opposed to talaq (repudiation by men), as can be seen in Table 5.

Since khul' required repayment of the sadaq to the husband, while talaq required simply that the woman give up her claim to any sadaq not yet paid, it is conceivable that sayyid families put pressure on their women not to initiate divorce, as it would have been costly for the family. By contrast, the Sidi Mhammed Ben Yahia sadaq, used mainly by commoners, posed relatively little obstacle to divorce. Also, it might be noted that khul' cases involving commoners include three cases of divorce sought by women whose husbands had deserted them or disappeared, in one case as a prisoner of war.[53] Such circumstances were more likely to occur among the poor, as men wandered in

[53] For divorce on the grounds of desertion, see Sijl, 27 Sha'ban 1270 (134 A); 6 Rajib 1270 (140 A); and 27 Safar 1272 (31 A).

TABLE 5
RELATION OF SOCIAL STATUS OF COUPLE
TO TYPE OF MARRIAGE DISSOLUTION

	Type of Dissolution	
Couple's Status	*Khul'* *(Divorce)*	*Talaq* *(Repudiation)*
Sayyid	2	8
"Si" or Ambiguous	2	6
Commoner	14	12

search of work or, out of desperation, joined the Tirailleurs Indigènes or the Spahis.

The most important point, however, is that the awlad sayyid seem to have dissolved their marriages at a fairly substantial rate, substantial enough to prompt us to look for an explanation as to why the awlad sayyid should have so seldom remarried. Conceivably, they did remarry before tribal qadis, but it is hard to imagine why this should be when commoners felt no reluctance to remarry before the Bureau Arabe qadi. A more likely explanation is that it had to do with women's role in inheritance: a woman's marriage outside the agnatic group meant giving away a potential inheritance share and a preferential option on the purchase of the family's land, unless the woman made a donation (hiba) of her share to male relatives, as was often but not always the case.[54]

Shafa'a (Pre-emption)

Nowhere are the implications of this clearer than in cases of shafa'a, or pre-emption, which constituted the most common form of dispute before the majlis—there were forty-seven cases in all. The rule involved was simple: if co-proprietors sold some land without the participation of a fellow co-proprietor, the latter could, within the space of a year, purchase the entire piece of land at the price paid, plus

[54] For a dispute over an alleged donation, see Sijl, 21 Safar 1270 (162 B). Probably, if remarriages took place before a tribal qadi, or a simple talib, they involved intra-lineage, or intra-tribal marriages, and thus did not pose serious problems in terms of property rights.

compensation for improvements. After a year, he or she could claim only their individual share of the property.

No doubt the popularity of this form of litigation is explained in part by the success rate: of forty-seven shafa'a claims, twenty were accepted, nineteen were rejected outright, four led to arrangements or sulh, and four to recuperation only of the inheritance share of the plaintiff. Of forty land disputes of other types, only five saw the victory of the plaintiff; thirty claims were rejected outright, and five led to sulh.

The most interesting aspect of shafa'a cases is the large proportion of them in which the claims were lodged on the basis of the inheritance rights of women, and the fact that these sorts of claim were more likely than others to be successful. Most of the other claims were made on the basis of sharika—co-proprietorship or association. The breakdown of success rates is shown in Table 6.

Al-Sayyid Ahmad Ben al-Majaji and his cousin al-Majaji Walid al-Hajj 'Abd al-Qadir, both from the Awlad al-baraka Sidi Ahmad Ben 'Ali—may God be pleased with him—jointly purchased part of the piece of land called Sakka Bu Ghara in the mazra' [fields or agricultural territory] of the Awlad Sidi Ahmad Ben 'Ali—may God be pleased with him—from al-Sayyid al-Najahi Ben 'Adnani for twelve Spanish durus. The faqih al-Bashir Ben al-Sayyid Muhammad Ben Ahjada has a share in this which he inherited from his mother, 'Auda Bint al-Sayyid al-'Adnani, which he has never sold. So he asks to buy his share, and the rest of the land, claiming that he didn't know [about the sale when it took place] and that he thus has the right to pre-empt. So they came before the qadi, al-Sayyid Tahar Ben 'Amr—may God strengthen him—whose seal is above. The two buyers explain their case to the qadi, saying that the claimant should get only the share of the land which he claims by inheritance from his mother, but that the claim of shafa'a should be rejected. Ben Ahjada claims as witnesses in support of his not knowing [of the sale] al-Sayyid 'Abdallah Ben al-Sahrawi, al-Sayyid Muhammad Ben al-Ramasi, al-Sayyid Mustafa Ben al-Mukhtar, and al-Sayyid 'Adnani Ben al-Sayyid Muhammad al-'Adnani. His opponents ask for confirmation of this in writing so Bashir shows two documents in the writing of our masters and the shaikhs of our ancestors (*sadatna wa mashaikh salafna*), one sealed by the seal of the Qadi al-Sayyid Hashu Ben Muhammad, and the writers of the other being al-Sayyid al-Hajj Muhammad Bel Mustafa al-Shariqi (a relative of the Amir) and other men of science. The contents

> of the first are that the witnesses do not bear the father of the defendant any worldly enmity, and of the second that they have no hatred of the defendant himself, and this is witnessed by people of justice (*ahl al-'adl*) and others. . . . (After citing some authorities of the Maliki school) the majlis rules in favor of the claimant.[55]

It is significant that cases like this, involving pieces of land of relatively little value, could be so long-winded, and involve relatively few shuhud (in this case, three, in addition to the katib and the qadi) while more serious cases were treated relatively briefly. Pre-emption can be seen as a sort of legal sparring match, a sort of ritual for playing out rivalries, lining up one's allies, showing off one's legal skills, and displaying one's impressive legal documents, while in the process acquiring another. Real conflicts were involved, but they were of a limited nature. Anyone making a major land purchase could easily take steps to assure that he would not be pre-empted.

Shafa'a quarrels were, as one might well expect, a sport of which awlad sayyid were particularly fond. They were definitely over-represented in such litigation, as shown in Table 7. Sayyids were involved in over half of the shafa'a litigation, while, if we take marriages as the best estimator of their proportion in the population, they constituted between one-fifth and one-quarter of the inhabitants of the Mascara vicinity.[56] Further, they were involved disproportionately in pre-emption claims based on the rights of women: thirteen

TABLE 6
PRE-EMPTION CLAIMS AND RESULTS

	Basis of Claim	
Result of Claim	*Woman's Inheritance Share*	*Sharika or Other*
Accepted	13	7
Rejected	8	11
Share Only	3	1
Sulh	3	1

[55] Sijl, 18 Jumada I 1272 (17 B).

[56] An analysis of over 500 individuals included in the sequester inventory of 1857 shows 26 percent sayyids.

TABLE 7
PLAINTIFFS AND DEFENDANTS
IN PRE-EMPTION LITIGATION

Defendant's Status	*Plaintiff's Status*	
	Sayyid	*Commoner*
Sayyid	18	4
Commoner	5	21

of their eighteen cases were so based, while only nine out of twenty-one commoner cases were.

These findings raise several questions: why were women so important in this litigation? And why were sayyids so often involved, and especially through women?

The importance of women has to do with the dynamics of pre-emption. When land was purchased, it was in the interest of the purchaser to assure that all the co-proprietors participated in the sale, either as actual sellers, or as witnesses to the sale. This was easy enough to do with family members still actually part of the corporate unit, but harder in the case of those absent—for instance, on a pilgrimage or serving in the military—and in the case of those, namely women, who had joined new corporate units but still had a claim in the property. Especially after the first generation, these claims were difficult to keep track of, and marriage across lineage or tribal lines made it even more difficult. Finally, buyers may have sometimes naively assumed—out of reflex "male chauvinism"—that the sellers had taken care to exherit their women by the device of donation.

The large proportion of awlad sayyid in such cases most likely stems from three factors: that they owned a disproportionate share of the land, that they practiced indivision, and that they fairly frequently married across tribal lines, thereby creating conditions propitious for pre-emption. Also, they were probably aided by their better knowledge of legal techniques: the legal tactics of commoners, in contrast, often betray a naïveté about even some of the basic points of law.

In a sense, the problem of pre-emption reflects on the nature of kinship in Mascaran society, and particularly within the maraboutic elite. On the one hand, they stressed the solidarity of agnatic groups, frequently marrying paternal cousins, and seldom dividing property

among the constituent elements of the group. At the same time, they also married across kin group lines within the bounds of their class. Although the device of shafa'a appears to be designed to protect the interests of the patrilineal kin group, in practice it tended to be more important in relation to affinal ties, bonds of marriage between two groups. And, conceivably, the ritual aspects cited above were related to a desire to reaffirm affinal ties.

One might envision the following scenario: those in Group A were falling on hard times, and realized that they had to sell off some land. But they were embarrassed to directly approach their affinal kin in Group B over the matter, so they sold the land to a third party. Then, with great fanfare, Group B pre-empt, reaffirming the old bond, and assuring that the land would stay in the hands of friends.

Viewed in another way, pre-emption can be seen as a symptom of the avoidance of conflicts between kin groups linked by ties of marriage, for kin groups with inheritance claims accumulated through exogamous marriages seem to have avoided jeopardizing the alliance, consecrated through marriage, by directly demanding to "cash in" on their inheritance claims. Rather, they waited until the land had been alienated to a third group with whom they had no serious ties to jeopardize.

But direct inheritance claims across tribal lines were sometimes made, and such disputes appear to have been considerably more envenomed than the usual pre-emption disputes. Particularly germane to this point is the dispute between a man from the Awlad Sidi Daho and Mulud Ben 'Aashit of the Atba Djellaba:

> The plaintiff is Muhammad Walid al-Hajj Daho Walid Khalifa of the Awlad al-baraka Sidi Daho Ben Zerfa—may God be pleased with him—acting for himself, and as a representative of his sisters, Khaira, Malha, and Khadija. The defendant is Mulud Ben 'Aashit, representing the inheritance of al-Hajj Ahmad Ben Khasla al-'Atbi. The first party complain against the second, demanding their right to their share in the price of the land left by al-Hajj Ahmad Ben Khasla in Habra, which they inherited from their father al-Hajj Daho, and he inherited from their sister, his daughter Fatima, which she inherited from her husband, al-Hajj Ahmad Ben Khasla, on the grounds that the inheritance was divided without the immobile property (al-'aqar), and that nobody has full rights to it without the participation of the others. The defendant answers that all the property was divided, so there is no ground for complaint. The two parties are called upon to substantiate their claims, and each

displays a document by al-Sayyid Ibn al-Sabr, qadi of the Burjia. The qadi examined them and found that the text showed division without the land . . . , and he found that the document of the defendant had an erasure . . . , and that this erasure was used to falsify it. Thus the qadi rules that the document of the plaintiff is valid, and that he has a right to the price.[57]

This case is unusual in several respects. It involved a direct inheritance claim across tribal lines; it led to an accusation of cheating on the part of one party; and it involved a marriage between a commoner, albeit an important one, and a woman from a maraboutic tribe, though perhaps from a non-sayyid lineage, since the plaintiff is not referred to as a sayyid. Both Ben Khasla and Ben 'Aashit had been qaids of the Atba Djellaba under the Amir (and perhaps before), but Ben 'Aashit in particular was closely tied to the makhzan elite, centered in Oran. The Awlad Sidi Daho were prominent in the maraboutic elite of Mascara. This was not a ritual sparring match, but rather a serious conflict along the most important political rift in the Province of Oran.

The conflict did not end in the majlis of Mascara, where it had been heard on 19 November 1854, but dragged on. From the Commandant's correspondence of 24 January 1855, we learn that:

Walid al-Hajj Daho has received an order to go to Oran to attend the majlis session which is to be held next Saturday. Far from bringing ill will to the case, Walid al-Hajj Daho has been insisting for several months that this case be taken care of; the Ben 'Aashit family are a bunch of troublemakers [*gens très tracassiers*], and they have several times been called upon to present themselves before the majlis of Mascara. In particular, they consented for the majlis of last Friday, but, following their habit, they abstained, demanding to take the case to the majlis of Oran. Moreover, mon général, if in this affair our people (the Awlad Sidi Daho) express a certain repugnance to go to Oran, it is legitimated by the presence on the majlis of Ben Gaid (Bel Qaid), one of the judges, who is interested in the case as the legal representative of one of the women, and who is here accused of having used his influence to swing the balance in favor of the Ben 'Aashit, relatives of his wife, when the first judgment was rendered.[58]

[57] Sijl, 16 Safar 1270/19 November 1854 (159 A). The fact that the case had been completely written up on the preceding page of the register, and then crossed out, and rewritten, stands as another indicator of the unusual nature of the case.

[58] Subdiv./Msc. to Div./Oran, 24 January 1855. I suspect that the area in question

Clearly, there were other convolutions to the case that I have not uncovered, but these are not nearly as important as the fact that both the conflict—between the Awlad Sidi Daho and Ben 'Aashit—and the alliance—between Ben 'Aashit and Bel Qaid—centered around ties of marriage. The shock waves from this crisis would carry over to the majlis crisis two years later, which contributed to the eventual dissolution of the majlis throughout Algeria.

This case points to answers to several important questions. First, as to the curious marriage habits of the awlad sayyid, it suggests an economic-legal motive. The practice of not pressuring divorcees to remarry, and that of reintegrating widows who had married outside the tribe, contributed to minimizing liability to claims on tribal land from the outside, and to maximizing the tribe's potential claims to outside land, and hence, perhaps, claims on the good will of others. Second, the case shows that the major conflict was not between tribes as such, but between political factions associated with the two predecessor governments, that of the Amir 'Abd al-Qadir and that of the Ottoman beylik, respectively centered in Oran and Mascara.

Within four years of this particular conflict, the land in question was irrigated by the waters of the Habra, in one of the first colonial development projects in the West, an ancestor of the extensive dam building in the region in the twentieth century. No sooner had the irrigation water begun to flow than a serious quarrel arose, within the colonial administration, over attempts by European and Jewish land speculators from Mostaganem to buy up shares through native intermediaries.[59]

Mobile Property

It is not clear whether such speculators were involved in the Ben 'Aashit case, and I suspect they were not. For, at the time, foreigners and the principal native mercantile groups—Jews and Mzabis—were limited mainly to the fourth category of transactions, those involving mobile property—animals, grain, jewelry, and money.

In transactions involving animals—mainly horses and mules—the presence of outsiders was limited, but significant, since these categories were not involved in land transactions. One occasionally finds a Jew or a European involved in animal sales. But one also finds an

was used by the Awlad Sidi Daho as winter grazing land, and this may well have been the reason for the marriage.

[59] See the correspondence of Subdiv./Msc. with Div./Oran and Proc.-Imp./Mgnm., in 1860 and 1861, in 30 JJ 129.

'Amri, a representative of one of the most unusual tribes in Algeria, whose specialty was (and, I am told, still is) horse trading. The French tried to put an end to this, at least in the Oranais, where the Ameur ('Amr) threatened to corner the equine market during the Crimean War, but they proved incorrigible in their gypsy ways.[60]

The largest involvement of outsiders was in the lending of money, an activity which became particularly lucrative as the colonial regime both increased fiscal pressures and expropriated land for colonization. Thus pressured, tribes, particularly those such as the Metchatchil who lived on the outskirts of the city, were forced to resort to usurers and, unable to pay off debts, were driven from the land to live in abject misery in the native quarter of Bab 'Ali, Mascara's counterpart to the bidonvilles of the twentieth century.[61]

The register offers some insights into the matter of money lending. Of course one finds the ubiquitous Jewish money lender, and also an occasional Mzabi, a member of the puritanical Ibadite sect who migrate from their desert home to follow their commercial calling in the cities of the North. But one also finds aghas and qaids in the money-lending business, and one finds an agha serving as guarantor for a debt contracted with a Jew.

Being a creditor is of course cold comfort, unless one has a reliable means of collection. While the French courts and the army would obligingly collect most Europeans' debts from natives, Jews, and especially Moroccan Jews (one of the major money lenders in Mascara was a Jew from Tetuan), probably could not expect such cooperation. The obvious alternative source of muscle lay in the native chiefs.[62]

An incident which occurred several years after the close of the register tends to confirm the suspicion that some sort of working relationship existed between the Jewish money lenders and the chiefs. On 15 March 1862, Chemoun Sabah encountered Qada Ben Mukhtar, qaid of the Mhamid, and the Agha Qaddur Ben Mukhfi (protag-

[60] On Jews, see Sijl, 23 Sha'ban 1272 (7 C); and 19 Ramadan 1269 (190 C). On Europeans, 29 Safar 1272 (2 B); and 12 Ramadan 1272 (30 A); an 'Amri, 27 Ramadan 1269 (190 F). On the problems of colonial administrators with the Ameur, see Div./Oran to GGA, 28 October 1857, in 1 JJ 11.

[61] On the dispossession of the Metchatchil, and its consequences, see Subdiv./Msc. to Div./Oran, 26 October 1860.

[62] On debts: to Mzabis, see Sijl, 20 Rabi' II 1270 (22 A); on 10 Muharram 1270 (171 E); to Jews, Early Rajib 1272 (10 B); 15 Dhu al-Hijja 1271 (41 C); and 6 Muharram 1270 (173 B); and 11 Shawal 1269 (169 A); to native chiefs, 1 Rajib 1271 (87 B); and 5 Sha 'ban 1270 (137 D); a loan from a Jew, guaranteed by a qaid, 10 Shawal 1271 (137 D). On the Chemoun Sabah affair, see Subdiv./Msc. to Div./Oran, 2 May 1862, in 30 JJ 130.

onist in the mill dispute) at the tent of a marabout, where the latter had reportedly gone to "make offerings." A violent altercation developed as the Jew demanded that Ben Mukhfi pay some money he owed. Chemoun Sabah was never heard from again. His body was burned, and his mule, hacked to pieces, thrown into the cresting floodwaters of the Wad 'Abd.

The vignette is horrifying, and it is curious. The most curious aspect is that the encounter should have taken place at a marabout's tent. The significance of this is not made clear in the report. Conceivably the meeting was an attempt to arrange, through the mediation of the marabout, a settlement between the agha and the Jew, a settlement which might once have taken place openly before the majlis. But between 1856 and 1862, events had moved rapidly. The majlis no longer existed.

2.6 Summary

The Mascara register does not, by itself, seem to bespeak a society in crisis. Yet, when viewed in context, it gives some crucial clues about that society, and particularly its elite of awlad sayyid. These men, one has the impression, were not well equipped to deal with the rapid changes which would be thrust on Algeria in the years to come. When the fuqaha of the majlis were faced with a serious question—as in the case of the agha's mill—they took shelter in numbers and failed to give a full hearing to the complaint lodged. Cases to which they gave an adequate hearing, and which they reported in full detail, were often of secondary importance—ritual disputes over preemption rights. In a sense, they remind one of a window-dressing parliament in a dictatorship, where deputies vent their eloquence on safe questions and minor quarrels and, on the few occasions they have to debate important questions, efface themselves.

In their social outlook, they remained preoccupied with status distinctions, endlessly invoking God's blessings on each other's ancestors, while offering commoners no badges of distinction at all, except for an occasional "Si." And at least one of the fuqaha seemed perplexed by the appearance on the scene of a new type of elite member, the geographically mobile native fonctionnaire. In economic terms, the awlad sayyid remained tied to an old land-tenure system, whose pivotal aspect was indivision, which, combined with their acceptance of Islamic inheritance law, resulted in a highly complex web of overlapping claims. They may have been thus protected from the ravages of the free market in land, but, in the Algerian context, such protec-

tion was temporary, one might even say illusory. Colon speculators were waiting in the wings, and as soon as legislation was introduced which facilitated the forcing of inheritance division (namely, the Warnier law of 1873), Algeria's patrimony in land could be plucked like feathers from an emaciated goose.

Only a rationalization of land holding from within (which would not necessarily have been a pleasant affair), in allowing concentration of land holdings in the hands of those best able to hold onto it and profit from it, could have warded off, to a degree, the disaster of *dépossession*. But this was too much to ask of the Mascara awlad sayyid, preoccupied as they were with ancestral blessings and the fine points of pre-emption tactics.

One must recognize, though, that this was a society which had suffered a great deal during the wars of resistance, and the remarkable thing is how quickly they were able to knit themselves back together again. In the haste and confusion of the hijra to Morocco fleeing French arms, the Hachem had left behind numerous children with friends and relatives in other tribes who had stayed behind. Once they returned, they spared no effort to find those children and bring them back to the family. The most poignant case in the register involves a man reclaiming his daughter, "a girl who is now called 'Aisha." Her current guardian claimed that she was the daughter of relatives, but the majlis unhesitatingly ruled in favor of the plaintiff.[63]

It was a society in which there were no loose ends, in which everyone—and thus everything—was firmly rooted in a network of kinship ties. When the French attempted to revive the institution of the bait al-mal, to recover loose inheritance shares, they completely failed. In 1849, they sent a native adjoint of the bait al-mal on a tour of the tribes in search of successions vacantes. He found none, and was eventually stranded in Tiaret without any money, so the local commandant had to make an appropriation from the secret funds to pay his way back to Mascara. From 1849 to 1861, the bait al-mal of the subdivision of Mascara collected only 700 francs from unabsorbed inheritance shares. In the city of Constantine, in the early 1850s, the bait al-mal collected over ten times that amount per year. That was a quite different sort of society.

[63] Sijl, 26 Sha'ban 1272 (5 C).

Chapter 3

THE URBAN MILIEU: SOCIAL "DECADENCE" AND ITS JUDICIAL UNDERPINNINGS

3.1 Algiers and Constantine in the Mid-Nineteenth Century

In the 1850s, the Muslim populations of Algiers and Constantine stood respectively at about 18,000 and 22,600. While these figures may strike us as quite small, these two cities constituted by far the largest concentrations of Muslim Algerians found at this time. Only Tlemcen, with a population of 11,300, came close to them.[1] No doubt the Muslim communities of both these cities had diminished in population, grandeur, and prosperity from their pre-conquest states. Yet both had preserved a good many of their urban qualities: they maintained a fair amount of artisanal activity; they had a modest number of schools; and they drew workers and students from the countryside. But the outlook for both Muslim industry and education was admittedly bleak.

In the picture presented by the reports of the civil Bureaux Arabes,[2] both cities seem to have been undergoing, in the 1850s, a social crisis involving a host of typical urban problems ranging from drugs to prostitution. And, as for the urban notables,[3] they seem to have been unable, with rare exceptions, to cope effectively with the challenge

[1] See *B.O.A.G.*, 1855, pp. 78-80. For more detailed demographic statistics, see reports of the Bureaux Arabes Départementaux, running from 1849 to 1858, in F80 512-520.

[2] Properly speaking, these were the Bureaux Arabes Départementaux. (I call them "civil" to distinguish them more easily from the better-known military Bureaux.) Established in 1848, they were under the surveillance of the prefects, and charged with Muslim administration in civil territory. The reports from Constantine and Algiers in the 1850s are among the most detailed sources on Muslim social life at any time in the colonial period. Certain aspects of these reports, particularly relating to economic affairs, demography, and education, have already been studied by André Nouschi, in "Constantine à la veille de la conquête," *Cahiers de Tunisie*, 3 (1955), pp. 370-387; and Y. Turin, in *Affrontements culturels*.

[3] I use the term "notables" here because it is more inclusive than 'ulama. However, most of the important notables, excepting some who came from Ottoman military families, would have qualified, broadly speaking, as 'ulama.

presented by colonial domination. French administrators tended to draw a moral conclusion from these observations: that Muslim society was irretrievably plunged in decadence, and might well obligingly disappear, thus permitting the development of all-European cities.[4]

The picture is of course strongly colored by the particular perspective of the French administrators who manned the civil Bureaux Arabes. Yet despite the undoubted distortions, the reports present an array of facts unmatched by documents for any other period in Algerian history.

Both of the themes I have cited—the "decadence" of urban society and the weakness of the notables—are closely related to the subject of Muslim justice. Many of the social problems had a judicial manifestation, and proposed remedies often focused on the law and its administration. It was among the 'ulama, the core of the urban elite, that judicial officials were chosen.

Piecing evidence together, I present the social problems in a new light, and take issue with the notion that these societies were undergoing a severe moral crisis, at least of the sort that the French perceived. What French observers have termed "dégénération," or "désagrégation," I call "atomization," in order to convey the notion of individual units being loosened from larger, complex "molecular" units, such as the tribe or the family.

I do not intend to suggest that these societies were nothing but a sheet of loose sand, but rather that the urban milieu acted as a sort of solvent, which did not so much cause as it facilitated the undoing of old bonds—and the formation of new ones. This process of atomization should not be conceived of as taking place within the strict physical bounds of the city, for these urban societies were of course bound in myriad ways to the environing rural society. Nor should it be seen as an ill brought by colonialism: ill or not, it is likely that the process was quite an old one.

In attempting to understand the weakness of urban notables, one should understand that they were in a tenuous position: their privileges and status, indeed their very way of life, were threatened by the massive European presence in the cities. Unlike tribal leaders, they could not counter French pressures with insinuations that this or that objectionable measure might make it difficult to control the ever-turbulent tribes. Some of the notables retreated to what Jacques

[4] Relocation of the urban poor to the countryside is in fact suggested in the "welfare commission" report of 1855 discussed below.

Berque has termed an "Islam refuge," taking comfort in the mystical and ecstatic practices of Sufism. Others withdrew bodily, emigrating to countries still under Muslim rule, an experience from which many returned disappointed. But many neither "dropped out" nor fled, but intently observed the newly arrived strangers, looking for cues, suggestions, as to what attitudes and strategies it would be appropriate for a Muslim notable to adopt, in order to survive in the new circumstances.

Most of these men seemed intent primarily on pursuing individual interests, rather than formulating a common and coherent response to new problems. I want to stress, however, that there were some outstanding individuals who went beyond such a superficial adaptation and who sought to articulate coherent stances on critical questions. I discuss these men primarily in Chapters 4 and 8, and deal here simply with the "average" notable.

It may be viewed as unfair to present such an unflattering picture of the notables on the basis of evidence garnered primarily from European sources. I make no pretense, however, to presenting a complete study of the social and political life of the urban elite.[5] My concern is with explaining the weakness of the majlis, which was the tribunal of the elite, and the strength of the office of qadi, which was viewed as the popular jurisdiction. The hypothesis that the urban notables were rather weak and incohesive as a group, at least in the 1850s, helps to explain why the majlis itself was weak, and ultimately inessential. At the same time, understanding the strength of the office of qadi helps to explain why that institution survived and proved to be the springboard of a number of political careers.

3.2 Atomization in the Urban Milieu: Some Integrative Aspects of Disintegration

Monsieur Vignard, head of the civil Bureau Arabe in Constantine, was a man given to philosophical speculation and sociological com-

[5] There were some attempts at resistance on the part of urban notables, especially in the early 1850s, and they have not yet been carefully studied. See Pref./Cst. to GGA, 22 June 1852, in 1 H 9; and Chef du B.A.D./Cst., "Notes concernant la conduite politique de quelques personnalités Musulmanes de Constantine" (1852), in 1 H 9; and B.A.D./Cst., Report—September-December 1850 (rumors about expropriation of mosques); Div./Cst. to GGA, 22 February 1852, in 1 H 9 (millenarian pamphlet). By 1855, the hadri notables seem to have resigned themselves to colonial rule; see B.A.D./Cst., Report—January-July 1857, in F80 517.

mentary, the sort of loquacious pedant historians delight in finding. He wrote in early 1858:

> It is a notorious fact signalled by philosophers and historians, that the Muslim people, whatever race they belong to, have become increasingly impoverished over the last three centuries. Wherever the Muslim people have not yet entered into immediate contact with civilization, they have maintained themselves with the aid of their [sense of] nationality and their fanaticism; but wherever civilized Europe has implanted itself firmly, wherever the national unity has disappeared, the elements of disorganization multiply with rapidity.[6]

He, along with many other colonial administrators of the period, was guided by a positivist penchant to search for statistical parameters which might scientifically describe this disorganization,[7] and the Bureaux Arabes reports were crammed with figures, any of which might give rise to lengthy observations.

Curiously, they had little to say about the most obvious and perhaps direct index of disorganization, namely the figures on successions vacantes, or unabsorbed inheritance shares, which came into the hands of the bait al-mal. Perhaps they found this data an inappropriate subject for moralizing, since it brought considerable sums into the state coffers: from 1851 to 1853, Constantine's bait al-mal realized an average of 10,000 francs per year.[8] The lack of commentary may also have derived from the simplistic assumption that this was a normal state of affairs for a Muslim society. Only observers in the more solidary tribal milieu, such as the Commandant of Mascara, were able clearly to perceive the sociological implications of the urban bait al-mal's prosperity.

One does find a few worried observations on the widespread use of hashish. In preconquest Constantine, the use of this substance had been limited, reportedly to a "few bad subjects." But in 1851 there were some twenty-two cafes and shops where the drug was sold and consumed in public. There were frequent cases of "aliénation mentale" brought on by the drug. The Prefect saw in its use a double

[6] B.A.D./Cst., Report—July-December 1857, in F80 517.

[7] The strong positivist cast of French policy in Algeria can be contrasted with the conservative policy pursued under Lyautey in Morocco, which was strongly marked by such leaders of the fin de siècle revolt against positivism as Gustave Le Bon.

[8] The data suggest that most of the shares recuperated by the bait al-mal were of relatively small value. Probably these involved people who did not so much lack for relatives as for money enough to draw them from a long distance to claim it.

danger: it could drive men crazy, and it could "fanaticize" them. But he also admitted that an anti-drug campaign would run up against substantial vested interests, namely those of the colons, who were heavily involved in the lucrative trade.[9]

But there was one area where no fiscal or commercial vested interested tethered the moral fervor of the administrators: the divorce rate seemed so extraordinarily high as to constitute a social plague. Moreover, urban Algerians tended to avoid the stricter provisions of Maliki law regarding remarriage by getting married under Hanafi law, which required no probationary 'idda, or waiting period, during which a divorced woman was not allowed to remarry. In 1851, the Hanafi qadi of Constantine performed 569 marriages and 164 divorces; the Maliki qadi 214 marriages and 166 divorces.

Within the urban population, there were only some 2,000 Turks and Kurughlis who might have claimed with some consistency to follow the Hanafi rite.[10] Although the divorce rate may not ruffle Americans in the 1980s, it must have looked horrendous to men still wriggling in the legal straitjacket bequeathed by the Bourbon Restoration. French observers of the time saw in divorce, and her ugly sister polygamy, the cause of such evils as prostitution, poverty, infanticide, declining population, and antipathy to science.[11] Despite this thicket of prejudices surrounding the data, it is possible to understand the role of divorce in urban social life, at least in a general fashion, through a careful study of French archival material.

Divorce and the Social Role of the City

Among the most important roles of the Algerian city was that of refuge—social, political, and psychological—for all those who re-

[9] B.A.D./Cst., Report—April-June 1851, in F80 507. The figures on the hashish trade are rather staggering. From October to March 1851, some 4,120 kilos entered the city, legally paying taxes, and probably a good deal more entered clandestinely. Probably a great deal of the consumption can be traced to the Tirailleurs Indigènes, regular denizens of the cafés maures. The Tirailleurs were a common source of public disturbances. They would make the subject of a very interesting study, if records can be found in the Ministry of War archives at Vincennes.

[10] Figures from reports in F80 507. The disproportion was pronounced for marriage because it was the rite under which the marriage was performed that determined the conditions of divorce.

[11] According to the Saint-Simonist senator Michel Chevalier, polygamy "prevents the development of social institutions, social movement, refinement of usages, culture of the spirit, and progress of the arts, literature, and science." Procès-verbal of the Senate, 30 June 1865, in *L'Africain* (Constantine), 1 July 1865.

jected, or were rejected by, the tribal world of the countryside, with its severe mores and the all-enmeshing ties of kinship. The dimensions of this phenomenon are made clear in the report of what could best be termed a "welfare reform commission," which met in Algiers in 1855. According to it, there were some 1,885 families, including 2,570 individuals, who received aid from the Bureau de Bienfaisance—out of a total Muslim population of some 18,000, of whom about 7,000 were classified as berranis, migrant workers living only temporarily in the city. Those receiving aid included 84 orphans, 128 old women, 197 old men, and 1,107 women with children.[12]

"Welfare" statistics must of course be treated with circumspection, but we should at least be entitled to posit that behind these extraordinary statistics lies a distinct phenomenon, one which is well worth exploring.

It seems unlikely that all of these women were native Algeroises, especially considering that 39 percent of the population were berranis. From the sociological and historical context, one can assume that these "welfare mothers" fell mostly into two groups: first, Negro women who had fled their masters in the countryside, or had deserted an urban master after the emancipation decree was issued in 1848; and, second, rural Arab or Kabyle women, who were driven out of their homes, with or without a husband or lover, by any variety of economic, political, or social forces.[13] In part, they may have represented the after effects of the war of resistance. But, for the most part, this phenomenon probably involved the usual sad story of girls bringing shame on the heads of their fathers and brothers by their unbecoming behavior, or of girls who were orphans, or from extremely poor families.[14]

A case cited in the August 1849 report from the Constantine Bureau is probably fairly typical: a girl aged sixteen, from a tribe in the hills north of Constantine, had lost both her mother and father, and had been married to a tribesman—presumably at a low price—who ill-treated her, and gave her little food and clothing. She took refuge in Constantine, where she was taken in by a prostitute, who in-

[12] Rapport de la commission sur la distribution des subsides, secours et aumônes, Algiers, 1855, in 14 H 3.

[13] The records for Constantine show that the berrani population, except for Negroes, was predominantly male. But it is easily conceivable that Arab and Berber women from the countryside were overlooked in the counting, since they did not hold jobs which would require registration with the amin of the berranis.

[14] For a well-told tale of woe, see Fadhma Aith Mansour Amrouche, *Histoire de ma vie*, Paris, 1972.

tended, according to the report, to exploit her youth and beauty. However, her case came to the attention of a French native affairs administrator, and she was turned over to the mufti until the qadi could find a husband for her.[15]

While the roughness of country life pushed women to the cities, there were also factors pulling them, specifically the more tolerant mores of the city; and it is here that the qadis, as ultimate arbiters of urban mores, played a key role. The city qadis, especially in Constantine, tended to give greater consideration to the rights of women than did their tribal confreres. In following this line of conduct, the urban qadis reflected their own commitment to legal orthodoxy, along with contempt for the brutal ways of country folk. Also, one might suspect that they sought to prove to the French, and particularly to the judicial authorities to whom they were subordinate, that Islamic law was indeed humane and did offer protection for women's rights.

In this respect, there is an especially revealing vignette told by Mrs. G. A. Rogers, an English traveler in Algeria in the mid-1860s. She traces the isnad, the chain of authorities of the story, to Monsieur Cherbonneau, a professor of Arabic in Constantine, who in turn heard it from Muhammad Shadhli, "a Mussulman of high legal standing at Constantine." (He was director of the médersa.)

The qaid of the Harakta (a large and turbulent tribe who lived to the southeast of Constantine, near Ain Beida), so the story goes, returned one day from a trip to the city earlier than expected. He immediately ordered a servant to bring him four stakes, and four pieces of rope. This done, he tied his wife, spread-eagled to the ground, and beat her until he collapsed from exhaustion. Alarmed Haraktis came running to the scene on hearing the unfortunate lady's screams, and demanded of their chief: "But what has she done? She is the pearl of the tribe. She is the best of mothers. She is a model for wives." The qaid explained that while in the city he had seen a woman go before the qadi, complaining of bad treatment, and that the qadi "pronounced in her favor." This so infuriated him that he completely forgot why he had come to the city in the first place, and he "set off instantly to avenge, on his poor unhappy wife, the affront which had been offered the lordly sex!"[16]

The story is sparklingly apocryphal, but the communications circuitry by which it found its way into an English travel book should spotlight the issues and motives underlying the story's development.

[15] B.A.D./Cst., Report—August 1849, in F80 507.

[16] Mrs. G. Albert Rogers, *A Winter in Algeria, 1863-1864*, London, 1865, p. 305.

Médersa director Shadhli seems to have been intimating to this French friend that the tribesmen were thugs, whereas city folk were decent and civilized, worthy of the entire confidence of the French.[17] And Cherbonneau, the government Arabist, sought to show this English visitor what fine camaraderie existed between himself and a member of the native elite, lest she get the impression that the French were incompetent at colonialism.

A jurisdictional dispute between the qadis of Constantine and the commandant of the surrounding military territory suggests that woman-initiated legal actions were quite common, and that they met with strong disapproval on the part of the tribesmen and their self-appointed spokesman, the commandant. The officer complained that the city qadis, in demanding that the military authorities cooperate in compelling recalcitrant litigants to appear before the mahkamas of the city, were going beyond the bounds of their statutory powers, and furthermore were encroaching upon the functions of their colleagues in military territory.[18]

In their defence, the qadis reported that these instances generally involved two sorts of cases: first, questions of inheritance, where the accepted doctrine in Algerian jurisprudence was that the division of the inheritance should take place in the jurisdiction where the death had occurred; and, second, cases in which a man had taken refuge in military territory, leaving his wife unprovided for in town, and thus putting the case within the jurisdiction of the urban qadi as long as the woman stayed in town.[19]

While in both cases one might accuse the qadis of trying to "drum up business," it is unlikely that the dispute would have become as serious as it did unless the qadi of Constantine were consistently treating cases in a manner substantially different from the rural qadis.

The first sort of case may reflect women trying to avoid exclusion from the division of their husband's inheritance, where the property involved lay in military territory.[20] As for the second type, one would

[17] Shadhli was a long-time protégé of the French who had gone out with the columns in the 1840s to spread pro-French propaganda among the tribes. Later, he served as an intellectual companion for the Amir 'Abd al-Qadir in Amboise. For details, see Bilqasim Sa'adallah, *Muhammad al-Shadhli al-Qsuntini*, Algiers, 1974; F. Rens.: Mohammed Chadely (1848), in 6 H 25; Div./Cst. to GGA, 11 January 1859, in 1 KK 34; Subdiv./Set. to Div./Cst., 14 August 1854, in 40 KK 9 (on his son's revocation as qadi of Sétif); obituary in *Mobacher*, 27 October 1877.

[18] Div. Cst. to Proc.-Imp./Cst., 22 January 1869, in 1 KK 294.

[19] Div./Cst. to Proc.-Imp. Cst., 24 February 1869, in 1 KK 294. The man who put forward the arguments was probably al-Makki Ben Badis.

[20] This sort of case arose often in instances in which Mzabis had married women in

assume that women received less favorable treatment in the tribal milieu, where different standards prevailed, and where her husband could more easily exert pressures on the qadi. Emotions could run very high over divorce cases, and qadis literally took their life in their hands in ordering a divorce without the consent of the husband.[21] The commandant sought to parry the qadis' arguments with a number of petty objections, but these ill concealed the central problem: that the commandant found it politically difficult to act as the gendarme of hadri justice in the midst of rugged tribesmen whose standard epithet for the hadri was "women."

In the documentation on Algerian jurisprudence with regard to divorce, provided by Cherbonneau and Sautayra in their 1873 work on Islamic law in Algeria, it appears that khul', or woman-initiated divorce, was largely a phenomenon of the towns and cities.[22] However, the real test of a qadi's respect for women's rights was not whether he allowed khul' divorces—in which the woman, or her family, were required to return the sadaq to the husband—but whether he would accept a woman's complaints of ill-treatment as grounds for pronouncing divorce by decree, in which case the sadaq was not returned.[23] The point is a crucial one, for it is only in accepting this doctrine that qadis could seek to curb the violence of men wanting to drive their wives into demanding divorce, and to thus recover the sadaq.

Cherbonneau and Sautayra cite only one case where the doctrine of decree divorce was accepted. It was a judgment issued by the qadi of the second circonscription of Constantine:

> Fatima Bint Sa'id explained that she had been divorced by her husband on 10 July preceding; that in order to obtain the divorce, she had to pay 400 francs; that she now demanded the restitution of that sum, which she had been forced to pay, as a result of poor treatment and violence exercised upon her, ills of all sorts to which he subjected her. The husband denied the allegations of his wife. Fatima produced witnesses in support of her claim. The qadi, taking his 'adils as witnesses, judged in favor of the woman; he maintained the divorce pronounced on 10 July, but annulled the obli-

the North. See Capitaine Vigorous, "L'émigration temporaire des Mzabites dans les villes du Tell algérien," *La France Méditerranéenne et Africaine*, 1 (1938), pp. 89-103.

[21] Several qadis were assassinated over questions of divorce. See Chapter 6.

[22] E. Sautayra and E. Cherbonneau, *Le droit musulman: du statut personnel et des successions*, Paris, 1873, tome 1, pp. 254-255.

[23] Decree divorce is recognized in Maliki law, but not Hanifi.

> gation undertaken by the woman to pay 400 francs; and he ordered the husband to return the sum which he had received from her.[24]

This qadi, who took it upon himself to address a lesson to a tribal qadi, whose judgment he reversed, and who, moreover, effectively usurped the role of an appeal jurisdiction (which at this time, in 1863, should have been the role of the French tribunal) was al-Makki Ben Badis. And it was probably he who had so insensed the qaid of the Harakta.

In fact, al-Makki seemed to have quite a personal reputation for liberality in marital matters: in 1868, the commandant of the cercle of Constantine complained that he was "in the habit of performing marriages for all women fleeing the conjugal or paternal domicile who find refuge in the provincial capital."[25]

There were, however, limits to his liberalism, one might even say a contradiction in his attitudes on the "woman question." In 1863, an arrêté of the Governor-General ordered that any woman wishing to have a notarized act drawn up would have to appear before the qadi. In 1865, before the Conseil Général of Constantine, al-Makki demanded that this arrêté be withdrawn, and that one return to the system whereby the qadi could dispatch his 'adil to a woman's or a sick person's house, whenever such a party wanted a document drawn up. This, he assured the conseillers, was the system which had been followed "since the beginning of time." He had tried following the arrêté, he said, but it had resulted in "unprecedented disorders."[26]

European visitors to the mahkamas of Algiers bear witness to the spiritedness of women litigants, and suggest what it was that al-Makki meant by "disorders." Again, it is a visitor from England who offers the most graphic description. The Reverend J. W. Blakesley reported in 1859: ". . . those women I heard were very voluble and far more vehement than most male witnesses, and in one or two instances were obviously snubbed by the qadi for wandering from the point at issue, but with as little effect as is generally produced by a similar proceeding upon an Irish woman at Bow Street."[27]

Occasionally, one finds a son of Descartes with a keen sense of

[24] Qadi, Circonscription 2, Province de Constantine, 2 August 1863, cited in Sautayra and Cherbonneau, *Le droit musulman*, tome 1, p. 249.

[25] Subdiv./Cst. to Div./Cst., 8 July 1868, in 30 KK 21. In one case, a woman of the Telaghma had been refused the right to remarry on the ground that her 'idda had not yet been terminated. She went to Constantine, and was married by Ben Badis, no questions asked.

[26] Al-Makki Ben Badis, in Con. Gen./Cst., session of 21 September 1865.

[27] Reverend J. W. Blakesley, *Four Months in Algeria*, Cambridge, U.K., 1859, p. 25.

observation. M. J. Baudel, a metropolitan visitor (if colons took an interest in Muslim social life, they seldom expressed it in writing), penned the following description:

> The pleaders, waiting their turn, listen distractedly to the witnesses and defenders. Some walk about with a worried, dreamy air, weighing their chances of success, seeking new proofs; others snooze peacefully; here, one discusses with his adversary; there, a man, confident of his case, gives his wakil final instructions. All of a sudden, a piercing scream breaks out: it is a woman whose husband wants to repudiate her. . . . Everyone listens with *un malin plaisir.*[28]

True, women in cities had to testify from behind a special grill (one suspects as much out of concern for public safety as any ingrained conviction of women's inferiority), but at least their direct participation in legal affairs seems to have been accepted in the city, while in a rural area, such as that of Mascara, it was not, at least in the 1850s.

There, women were represented, even in most divorce cases, by male relatives serving as wakils. The critical question in the case of the cities is *which* women were admitted to testify, at least without reservations on the part of the qadi. I think it likely, though this cannot be substantiated without an examination of urban judicial records, that most of the voluble pleaders were lower-class women, often emigrants from the countryside, whose major legal concern was divorce.

To fully understand this phenomenon, we must ask how, once in the city and alone, these women provided for themselves, aside from availing themselves of the meager handouts of the Bureau de Bienfaisance. In Constantine, one could find a few Negro women who had found jobs in the fruit and vegetable vending business, but their Arab sisters could not so easily venture into such a public profession. The Algiers "welfare reform commission" associated the abundance of single women with prostitution. And no doubt there was a substantial amount, as one would expect in a port or garrison town. But this analysis is the easiest one, and smacks of a rather superficial moralism which is too often found in French views of native society. It is quite likely that some of these women worked as maids in the homes of wealthy Europeans and Muslims. I have found no direct

[28] M. J. Baudel, *Un an à Alger*, Paris, 1887, p. 141.

documentation of this, except in the case of Negro women in Constantine.[29]

There, at the time of emancipation, in 1848, slaves had simply walked out on their masters, and had "gone out to enjoy the sunshine"—until they got hungry. By that time, their disgruntled Muslim masters had decided on a sort of collective lock-out. So the Prefect persuaded Europeans to hire Negro women as maids. Although the ensuing experiment was largely a failure (Europeans complained that these headstrong ladies expected the same pay as a European maid!), it does at least confirm that there was a market for domestic labor, among both Europeans and Muslims.[30]

Especially in the case of Arab or Berber women, urban occupations of any sort were probably in most instances of a stop-gap nature: the women's primary goal was often to remarry, and in the city their prospects were quite good. The Constantine prostitutes can be taken as a case in point: 10 of the 73 filles soumises registered at the municipal dispensary as of October 1851 went before a qadi in the following six months and made declarations of tauba (repentance), and then got married.[31] And, when they got married, it was often to Tirailleurs Indigènes, who were, in a sense, their male counterparts. For they too had fled the misery and social constraints of rural society. As one report put it, "they were the lost children of the tribes, from which they had been chased by misery and shame."[32]

Thus the divorce problem appears in an ironic light: while conventional wisdom told observers that this was a symptom of social sickness, a sure indication of disintegration, it was linked to an integrative process: the circulation of people from the countryside to the city, and the reweaving of bonds which, for one reason or another, had broken down in the tribal milieu. The motifs of this migration were not simply economic, but in many cases social. The urban qadis, in particular al-Makki Ben Badis, did not simply engage in a vain soliloquy on the brutishness of tribal mores, but were rather pursuing an active role, tapping real discontents, and conceivably pre-empting French intervention on a critical issue.

In short, the city functioned, with respect to the environing rural

[29] The "fatma," as colons called their Algerian maids, is a familiar figure of the twentieth century. It is not clear when Muslim women first entered the domestic service of Europeans in significant numbers.

[30] On the maid experiment, see B.A.D., Cst., Report—January-March, June-July, and August 1849, F80 507.

[31] B.A.D./Cst., Reports—October 1851-March 1852, in F80 507.

[32] B.A.D./Cst., Report—September-December 1850, in F80 507.

society, as a sanctuary and safety valve, which most tribespeople were probably glad to have. At the same time, rural society provided a reservoir of labor, and conceivably urban qadis were concerned with helping to create conditions conducive to attracting workers or soldiers to the city.

Also, the phenomenon seems to have had deep roots in Algerian culture, or at least in the culture of certain regions, such as the Aurès, or among the Awlad Nail, where unmarried women often engaged in a ritualized, socially accepted form of "courtisanship."[33]

Given that cultural context, we should not credit Ben Badis with a one-man reform campaign. Too, we should recall that this same man who so liberally treated the oppressed tribeswomen, at the same time argued that women should have documents drawn up at home—in other words, he defended the seclusion of women. These contradictory positions reflect, I think, his different standards in relation to the urban notables—that group who most stringently seclude their womenfolk—and to the urban and rural masses toward whom the hadri qadi felt that he had a mission as moral overseer.

Seeing the hadri notables frequently defend the seclusion of women, especially in relation to questions of judicial procedure, one cannot help but agree with anthropologists, such as Vanessa Maher, who posit that the reasons for seclusion are largely economic and legal considerations. In open court, a woman could be prodded or prompted by her agnatic kin, whereas when she was kept at home, her husband could regulate her social contacts, and more effectively assure her loyalty to the interests of *his* family.[34]

In a sense, this is much the same situation as we have seen in Mascara: these were strongly agnatic societies (though this element appears to have been stronger in Mascara), yet they did recognize the need for affinal ties in order to forge alliances between patrilineal groups.[35] While this dual orientation can no doubt be found to a

[33] See Mathéa Gaudry, *La femme Chaouia de l'Aurès: étude de sociologie berbère*, Paris, 1929.

[34] See Vanessa Maher, *Women and Property in Morocco: Their Changing Role in Relation to the Process of Social Stratification*, Cambridge, U.K., 1974. The most frequent abuse of seclusion as it related to legal affairs was in matters of donation (hiba). Most scholarly speculations on the matter of seclusion tend to focus on origins and causes. See, for instance, Sherry B. Ortner, "The Virgin and the State," *Michigan Discussions in Anthropology*, 2 (Fall 1976), pp. 1-16.

[35] A good source for the study of family structure are the ventes sur licitation, legal announcements in the newspapers, which list all co-proprietors of the land being divided in cases where one or a few of them demanded division of property, which had usually come to them through inheritance.

certain extent in all sectors of Algerian society, it was especially important in certain groups. These groups, who strongly felt the contradictions which could arise between thse two principles, tended to have three fundamental characteristics: substantial wealth; an acceptance, in principle, if not always in practice, of Islamic inheritance law; and a sense of "class consciousness," mitigating but certainly not obliterating an identity with the agnatic group.

The Constantine notables and the Mascara sayyids both fit these characteristics fairly well. Many important aspects of their behavior—the practice of secluding women and the pre-emption penchant, above all—are best understood as an effort to accommodate and preserve affinal ties in the face of strong corrosive forces, namely, the devotion of all concerned to agnatic interests. At a later stage, two new factors would enter into the lives of many Algerians, including Muslim magistrates: salaries and geographic mobility. These factors might help to reduce the tension beteen affinal and agnatic loyalties, and promote the strength of the nuclear family and identity with a class.[36] But such a synthesis was still a long way off in the 1850s, when the hadri notables were not only hampered by their own more or less traditional internal contradictions,[37] but had been suddenly thrust into a confusing new world.

3.3 Hadri Notable Divisiveness and Colonial Rule

Contemporary observers give us an unflattering image of the mid-nineteenth-century Algerian hadri. Alexandre Dumas, who visited Algeria in the late 1840s, was relatively mild in his treatment. "The Moor," he said, "is like the Turk, excessively indolent, doubting nothing, and somewhat wily. He spends his life between the barber and the cafe, rarely at home. Timidity is the basis of character."[38]

And General Daumas reported, in a book that was part of a Librairie Hachette series for the distraction of railway travelers, that the hadri population was

> given to laziness; they don't know how to defend themselves in case of need. It is rare that one encounters among them a few

[36] This theme will be touched on in Chapters 7 and 8.

[37] The term "internal contradictions" is used by Robert F. Murphy and Leonard Kasdan, "Agnation and Endogamy: Some Further Considerations," *Southwest Journal of Anthropology*, 23 (1967), pp. 1-14. I am dealing here with a different social context (their study deals with Arabian nomads), and I use the term in a different sense.

[38] Alexandre Dumas, père, *Impressions de voyage: le Véloce*, Paris, 1871, p. 78.

> workers, and even these, refusing to give up their old, defective tools, can only with great difficulty survive in the face of European competition. The hadris are very vain and never pass up a chance to cast scorn on the rural Arabs.[39]

General Cadart, stationed briefly in Constantine in the late 1830s, found urban Muslims to be sycophantic, base, deceptive, and possessed of an unrestrained fondness for money.[40]

If the Europeans reacted negatively to the hadris, perhaps it was because it was they who were the Algerians with whom they had the most frequent contact, and whom they were the most likely to measure by European standards, precisely because the hadris were trying, albeit awkwardly, to emulate at least certain European values and styles.

Ahmad Bu Qandura, mufti of Algiers, was one of the most visible of the hadri elite. The perceptive and forthright Mrs. Rogers visited him in 1865, and found him to be a "kind-hearted, but deluded, follower of the false prophet." In enumerating to her his credentials as a man of civilization, the mufti recounted his meeting in Paris with Queen Victoria, and allowed that he was looking forward to following up on the invitation that she had extended to him to pay a call at the palace. And he assured his visitor that he had planned to take his wife to the opening session of the Cour Impérial (where he served as Muslim assessor) that year, but that he had refrained at the last moment, fearing that the audience might gawk at the spectacle of a veiled woman in the gallery.[41]

Although most hadri notables seem to have been a good deal more restrained in their dealings with Europeans than was Bu Qandura, they nevertheless must have felt themselves to be under constant scrutiny, to have an obligation regularly to display the correct attitude on cue from the Prefect or the Bureau Arabe chief. Hence, on the occasion of Napoleon III's autocoronation, in 1852, fourteen leading notables of Constantine, along with all the Muslim judicial personnel of the city, transmitted their congratulations to the Emperor. A more celebrated instance was the proclamation of loyalty by the Constantine notables in 1871, at the height of the Muqrani rebellion.[42]

[39] General Daumas, *Moeurs et coutumes de l'Algérie*, Paris, 1855, p. 5.

[40] General Charles Cadart, *Souvenirs de Constantine: journal d'un lieutenant de génie*, Paris, 1894, pp. 308 and 384.

[41] Rogers, *A Winter*, p. 20.

[42] Notables of Constantine to Napoleon III, 25 November 1852, in 1 H 11. On the 1871 proclamation, see Lacheraf, *L'Algérie: nation et société*, p. 89.

The Notables and Judicial Affairs

The eagerness to please on the part of the urban notables derived from two sources: their vulnerability—a corollary of their military impotence—and their own internal divisiveness. It was the latter factor which came into play the most clearly in judicial affairs, both in questions of the appointment of judges and in the functioning of the majlis.

The appointment or removal of a qadi was one of the most prominent concerns of the hadri notables, for, at this time, openly criticizing the colonial regime was a highly risky affair, and in the cities there were no other important posts—such as agha or qaid—held by Muslims, which could become the focus of political competition. Petitions supporting or opposing a qadi were quite frequent. In 1848, a group of some one hundred Algerois presented a petition to the acting Governor-General, General Changarnier, thanking him—a bit prematurely—for not revoking the qadi Qaddur Bu Sisni, in the face of what they claimed was calumniation. Their petition was noteworthy for little more than its hackneyed rhymes, which might be rendered:

> You've gifted us with tidings joyful,
> And phrases pure and wonderful.
> (*Liqad hibta 'alaina bashira adhima*
> *Wa ilfadh fasiha fakhima.*)[43]

While some prominent names appear at the head of the list, most of the signers were obscure, and the awkward scrawls suggest that they had only limited education. In short, this seems to have represented the effort of one faction of the elite, along with their clientele, trying to protect their own. And, in order to do so, they would go to considerable lengths to win the favor of the French authorities.

The urban version of the majlis was composed of four members, usually the muftis and qadis of the two sects represented in Algeria: the Hanafi and the Maliki. On rare occasions, one finds what was called an extraordinary majlis convoked under special circumstances, and its personnel were selected on an ad hoc basis. In the regular majlis, it was quite easy for judges to divide along lines of communal or factional allegiance into a two-to-two deadlock. A Bureau Arabe report describes the result: ". . . there was a highly animated debate, which degenerated into scandalous quarrels. From lively words, one proceeded to gross insults, and . . . the spectators at a certain instant

[43] Petition of Algiers notables to General Changarnier, in 17 H 5.

feared lest their most learned doctors came to blows."[44] The four-member majlis was officially instituted in Algiers and Constantine by a decree of 1848, and this seems to have been the standard arrangement, at least since the Ottoman days.[45]

The civil authorities in Constantine saw this chronic divisiveness as presenting an opportunity to intervene in judicial affairs, or, as they delicately put it, "to help the judges with our counsels."[46] The civil Bureau Arabe chief of Algiers saw in frequent cases of corruption evidence that the Muslim judges had long been accustomed to closer control by the political authorities, and that the French were being too lax. In effect, he was saying that these judges had what in modern Algeria is usually referred to as a "colonized mentality": left to their own devices, they were totally irresponsible. Thus one could argue that it was incumbent on the French to plug up this gap with "rules that allow them to strike at the unfaithful civil servant and the corrupt judge."[47]

The urban majlis showed little instinct to put up a fight, or even a protest, against French intervention. The members were quite easily intimidated, especially when the French judicial authorities accused them of trespassing on the jurisdiction of French courts.[48] And the urban majlis gives the impression of evoking very little respect from those who came before it. There were frequent reports of litigants summoned by the majlis simply refusing to appear, or appearing only to behave in an irreverent manner, and refuse to abide by the judgment of the majlis. A French official found that the majlis members ". . . need to take a more severe and dignified attitude vis à vis their justiciables, and to exclude from their assemblies those familiarities which are doubtless fine in private life, but which in the courts tend to efface the dignity which all judges need."[49]

Such problems called for more direct intervention, and, in Con-

[44] B.A.D., Cst., Report—September-December 1850, in F80 507.

[45] Pref./Cst. to Mın. Guerre, 4 August 1848, in 17 H 1. Prior to 1848, the qadis had been nominally under the surveillance of the French judicial authorities, but they apparently paid little attention to the matter. See B.A.D./Cst., Report—September-December 1850, in F80 507.

[46] B.A.D./Cst., Report—January-March 1854, in F80 508. This seems to be analogous to the role of the bash yahia bashi under the Turks, who represented the bey on the majlis. See Albert Delvoux, "Les édifices religieux de l'ancien Alger," *Revue Africaine*, 11 (1867), pp. 226-227.

[47] B A.D./Cst., Report—April-June 1853, in F80 515.

[48] See B.A.D./Alg., Report—July-September 1855, on the behavior of the majlis in the case of Veuve Dermineur vs. Ahmad Ben Mahdou.

[49] B.A.D./Cst., Report—January-June 1858, in F80 517.

stantine, the head of the civil Bureau Arabe took to sitting in on regular Friday sessions of the majlis. The result, he reported, was excellent. Since the usual litigants were "highly placed natives," who readily accepted the intervention of such an identifiable authority figure, the same administrator was able to report: : "I have accustomed the 'ulama to referring to me in cases which present difficulties."[50] In fact, one gets the impression that the Prefect of Constantine had, like many of the native affairs officers in the army, come to act as a sort of surrogate Muslim despot, pulling strings as suited his political purposes. Indeed this tendency was carried so far that, in 1858, Minister of War Vaillant had to call him to order.[51]

Special Problems in Urban Judicial Affairs

In part, the ineffectuality of the 'ulama stemmed from a rather traditional source: they had been subjected to tyranny before, and were scarcely in the habit of expecting anything better. But the colonial situation had introduced to Algiers and Constantine new elements, which had not yet intruded in major ways in places such as Mascara. These were the existence of a rival judicial system, and the emergence of a new type of legal actor, the agents d'affaires, a class of unscrupulous speculators who thrived in the confusion of overlapping and poorly defined jurisdictions, and made a specialty of hunting out particularly vulnerable clients.

The French magistrates who manned the competing judicial system were, as a rule, contemptuous of Muslim judges and judicial institutions. Naturally they believed in the superiority of French law, and they obviously stood to benefit personally from the expansion of the French judicial system, which would bring the creation of more and better positions. Also, they tended to be more susceptible than were administrators to the pressures of colon public opinion, which held the qadi in disdain.[52] The French judiciary were particularly adamant in their opposition to the doctrine upheld by the prefects and championed by Marshal Vaillant, which held that the majlis should be considered a court of appeal. In 1853, the Algiers Cour

[50] B.A.D./Cst., Report—January-March 1854, in F80 508, and January-June 1857, in F80 517.

[51] Min. Guerre to GGA, 1 March 1858, in F80 1624.

[52] On the role of public opinion in colonial towns, see the discussion of slavery in Chapter 4.

Impérial ruled that the majlis could not be considered a tribunal proper, but only a sort of conseil de prud'hommes.[53]

In effect,the court was exploiting a lacuna in Islamic law: none of the classical texts give any definition of an appeal process involving a majlis. In precolonial practice, the majlis probably was "consultative," as the court had argued. However, the consultation they gave had the virtual effect of a sovereign judgment. As one French military official explained the matter: ". . . the qadi who had judged in first resort was, according to Muslim usages, obliged to submit [to the majlis's conclusions]." A qadi who persisted in what the majlis considered to be an error ran the risk of dismissal.[54]

Further, many of the cases that came before the majlis came directly to it, so the question of reversing a lower court judgment simply did not arise. But these subtleties were lost on the French jurists, who had quite other notions of how the appeal process should work, to wit, that since France was the sovereign power, only a French court could reform or quash a judgment.

In a setting such as Mascara, the sovereignty of the French courts was, in the early and mid-1850s, a moot question. Even if a litigant had the money to cover legal expenses and the trip to Algiers, most Mascarans had no idea of how to go about such an enterprise. Their prime source of information on such matters was the Bureau Arabe chief, who would have told them not to waste their money on such a foolish enterprise.

But, in the major cities, culture brokers abounded, and disgruntled litigants were apt to be greeted on their way out of the mahkama by an agent d'affaires, or by his native collaborator, who would explain how easy it was to gain one's just deserts by appealing to the French court. Thus it was that after the bait al-mal had won possession of two gardens in the outskirts of Algiers, first before the qadi, and then before the majlis, that a former slave of the proprietor was able, with the aid of two European agents, to take the case before the Cour Impérial, and win the gardens for himself.[55]

The case resembled a pattern lucidly analyzed by the chief of the Algiers Bureau Arabe, who wrote in 1853:

> It is widely known that there exists in Algeria a type of speculation, which consists in buying up the property of natives, and above

[53] B.A.D./Alg., Report—October-December 1853, in F80 515.

[54] See, for instance, Subdiv./Cst. to Div./Cst., 25 October 1860, in 30 KK 12. A similar position is taken in the Isaac Report of 1895.

[55] B.A.D./Alg., Report—October-December 1853, in F80 515.

> all of those properties which are under expropriation, or which studies may lead one to presume will be necessary for the State. The speculators are aided in their search for these properties by Muslim agents d'affaires, or wakils. These wakils are practically all untrustworthy people who have suffered condemnations for criminal acts, or who have managed to somehow escape justice by covering their fraudulent maneuvers. They bring before the qadis supposed proprietors, and above all women, obtaining procurations so they can sell property, sometimes everything a family owns. Often, it is simply witnesses who come to say that such and such a woman, member of such and such a family, declares that she has given the wakil authority to sell her property. In Médéa, a family lost in this fashion everything they owned, including their dwelling, to a European well known for this sort of acquisition.[56]

Given the facility with which people, even of low social standing, could, with the aid and prompting of the agents d'affaires and European speculators, abuse the faith of Muslim judges, it is understandable that the latter often saw no alternative but meekly to seek the advice of the prefectoral authorities.

But, beyond this, qadis had to contend with other strains in the legal fabric of the cities, which had been generated, at least in part, by the colonial situation. The Prefect of Constantine offered a provocative analysis of these strains: "[Constantine's] population, . . . with its troublesome, rebellious character, can no longer throw itself into public disturbances (as they had done in the days of the beylik), so today they apply their energies to private passions. Thus arise these interfamilial disputes which cause such regular scandals here."[57]

A great many of these scandalous interfamilial—and even intrafamilial—disputes seem to have been generated by problems of habus. One might well expect this, given the complexity of habus law, which permits one to stipulate conditions altering the normal pattern of inheritance division. However, new factors tended to complicate the matter further. First, urban property values had increased considerably since the arrival of the French. Co-inheritors of habus property, who had long left the property to be run by an enterprising relative, content themselves with a few durus annual revenue, now took a new interest in the property, especially if the manager had invested

[56] B.A.D., Alg., Report—July-September 1853, in F80 515.
[57] Pref./Cst. to GGA, 23 January 1858, in F80 515.

his own funds in improvements.[58] An even more blatant abuse involved "rediscovered" habus property, which had been sold for a few durus in the early years of the conquest, and was by now of much greater value. A seller would suddenly discover a habus title, and demand to repurchase the property at the original price.

This procedure superficially resembles shafa'a, but it differs sharply in that no time limit existed for habus reclamation, and in that the repurchaser was usually the same person who had sold the land in the first place. Rather than being the occasion for a largely ceremonial reaffirmation of alliances—as was the case for shafa'a in Mascara—habus disputes pitted individual family members against each other in many instances, and tended, by offering wide scope for abuse, to call forth the worst in people.

The possible benefits of speculative litigation were multiplied by the inconsistencies of French jurisprudence on habus questions. French judges were fond of maintaining that simple good sense sufficed for solving quarrels among Muslims. But this good sense often consisted as much of bourgeois sentimentality as of anything else, and it was often quite easy for lawyers to capitalize on those sentiments, or to appeal to a judge's sense of solidarity with his fellow Europeans.[59]

Competition between different branches of the administration complicated matters yet further. One might take as an example the case involving Mrs. Rogers' acquaintance, Ahmad Bu Qandura, in which he argued with a widow of Hajj Ahmad Bey (of Constantine), Kaduja Bint Uthman Khuja, over the guardianship of her child. Naturally, along with the child went a hefty fortune to administer, and it was Kaduja's contention that Bu Qandura was being less than honest in his administration of the trust.

Originally, Kaduja went to the Hanafi qadi, who sent her directly to the majlis. There, on 26 July 1852, the Hanafi qadi and mufti and the Maliki qadi found in favor of Bu Qandura. However, Kaduja found a friend in the person of the Maliki mufti, who issued a judgment in her favor, and ordered it inscribed in the register of the Maliki qadi.

Kaduja must have had some claim to the favor of the Prefect, for

[58] A case of this sort is discussed in Ahmed Ben Medjouba to Pref./Cst., in C. Gillotte, *De l'administration de la justice en Algérie*, Constantine, 1858. pp. 133-139.

[59] On French obfuscation of habus law, see E. Mercier, *Le code de habous ou ouakf selon la législation musulmane*, Constantine, 1899, p. 171. He argues that the qadis of Algeria had once observed the true principles of habus law, but that, after 1860, with the majlis no longer in control, the inconsistencies of French jurisprudence obliged qadis to accept invalid or defective habus acts.

she was able to appeal to an extraordinary majlis, a device borrowed from the Turks, who had reportedly used it only sparingly. This majlis met on 30 March 1852, in the presence of a French officer and an official from the civil Bureau Arabe. After exchanging the usual round of pleasantries (such as "Shut up! You're talking like a lunatic!"), these judges voted four to two in favor of Kaduja.

Thus, on 28 February 1853, the Cour Impérial heard simultaneously the appeals of both parties against the two existing judgments. The magistrates first made it clear that the institution of extraordinary majlis had no legal basis whatsoever, since the gubernatorial arrêté of 29 July 1848, on the authority of which the Prefect had convoked it, had never been published in the *Bulletin Officiel*, and thus, in effect, had no legal existence. It then went on to confirm Bu Qandura's right as guardian. As a final touch, the Muslim assessor, who had only a consultative vote (one of the colonial regime's more refined contradictions in terms), dissented.[60]

We should not find it too surprising that, a few years later, Bu Qandura would become an assessor at the Cour Impérial.

3.4 Qadi and Majlis: Judicial Roles and Sources of Recruitment

The preceding analyses seem to place the urban judges in quite different lights. On the question of divorce, they appear liberal; but in dealing with the French administration, they appear weak, divided, and hardly courageous. In effect, these different appearances spring, to a large extent, from the differences between two institutions—that of qadi and that of the majlis. The contrast emerges both (1) in the type of cases they usually handled and the type of litigant involved in those cases; and (2) in the origins and influence of the judges involved.

(1) *Judicial role.* In the cities, the difference between these institutions is that they tended to be tied to social distinctions more than to distinctions of competence (such as court of first instance/court of appeal). The qadi was the "popular" judge, the majlis the tribunal of the elite.[61] Well-heeled hadris seem to have felt it demeaning to have

[60] See Cour Imp./Alg., Arrêté of 28 February 1853: Boukandoura vs. Osman Kodja, in R. Estoublon, *Bulletin judiciaire de l'Algérie: jurisprudence algérienne de 1830 à 1876*, tome 1; and Pref./Alg. to GGA, 30 December 1852, in F80 1622.

[61] B.A.D./Cst., Report—April-May 1850. See also Div./Cst. to GGA, 22 February 1852, in 1 H 9, on the hadris' fear of being subjected to the jurisdiction of the amin of the berranis.

to go before the qadi, along with coarse laborers, soldiers, and peasants. By preference, they took their cases to the majlis, where they would be among peers. The popular jurisdiction was able to operate fairly effectively with minimal interference from the French, while the majlis seems to have invited such interference.

One can ferret a wide range of morals out of this observation, having to do with the solidarity of the masses and the pusillanimity of the classes. But what is important to see here are the mechanisms which underlay the difference. Many of the hadri notables owed their wealth, not to their enterprise or hard work, but to political influence and connections. Often their land holdings outside the city could be traced back to an act of generosity on the part of a bey—this was especially true in the case of 'azil land in the Province of Constantine. Since this land had usually been appropriated by the bey in more or less arbitrary fashion ('azil land usually had its origin in a tribe's being unable to meet the bey's tax demands),[62] there were often ill feelings between the urban landowner and the former tribal owners.

Thus, holding on to one's land often required preserving one's political influence: one had to proclaim one's heartfelt attachment to France, and to whomever fortune had brought to power in Paris. And there was a premium on developing personal ties with local administrators, which might be converted into influence with judges, French or Muslim. Colon speculators and lawyers were often drawn to these hadri notables, for the most profitable speculation seemed to involve cases in which the latter contributed a distinguished name and impressive, aging documents, and the former their legal expertise and political connections.[63]

Many hadri notables were reduced, either through lack of skills or lack of enterprise, to living off their capital, and, under the circumstances, fair play and loyalty to one's culture and institutions were easily forgotten. The further they ate into their capital, the more spurious the claims they put forth in court.

The most striking example is that of the Ben Lefgoun family of Constantine, descendants of the shaikh al-islam, hereditary spiritual chief of the city in precolonial days. In the 1880s, as Constantine became more crowded, the city, hemmed in on three sides by a ravine, found that the only possible way to expand was to "decapitate" or even totally flatten the Koudiat Aty, a bluff at the edge of the city.

[62] On the origins of 'azil land, see M. J. Maguellone, "Monographie géographique et historique de la tribu des Sellaoua Kherareb," *R.S.A.G.H.*, 48 (1914), p. 156.

[63] For example, on the dispute of the Beni Salah with Sulaiman Ben Larguech, see Subdiv./Bône to Div./Cst., 1 August 1868, in 20 KK 42.

Clearly the Koudiat would be a prime piece of real-estate, so Hamouda Ben Lefgoun argued that, since there was a cemetery there, and all cemeteries belonged to his family as spiritual chiefs of the city, the Koudiat obviously belonged to them. While he pursued this tenuous line of argument before the Tribunal, European creditors seized the Ben Lefgoun collection of some 4,000 precious manuscripts and sold it at auction at derisory prices.

As to the litigation brought by the simple artisan, shopkeeper or tribesperson before the qadi, it was usually of little interest to the French; and such people seldom had connections with the mayor or a French magistrate or a slick lawyer. The only grounds that occurred to the French for intervening in such cases were moral ones—to protect the weak and downtrodden. But, on this score, the urban qadi gave them little ground for serious complaint.

In Mascara, by contrast, there was not a sharp division between majlis and qadi, and, though there existed a strong social distinction between sayyids and commoners, all partook of the same values and felt themselves to be a part of the same society. They would not refer to each other with such epithets as "barbarian" or "women," respectively used by the hadri and the tribesmen in the Constantinois. Further, the Mascara elite do not seem to have been as vulnerable as the Constantine hadris to loss of government patronage: they had lost a great deal already, and what they did own was milk, private property without political strings attached. It is for these reasons, I think, that the Mascara majlis could play a viable role in local society, but also that it would ultimately prove hard to control.

(2) *Recruitment of judges.* In respect to its composition, the urban majlis contrasts with the Mascara version in several ways. There was no single figure to preside over the majlis, as the Bureau Arabe qadi did in Mascara. All four of the majlis members were in government-paid jobs, hence more vulnerable to French pressure than were the Mascara shuhud. And in the city majlis, there did not seem to be such a potentially wide political rift as was visible in the makhzan/marabout division in Mascara.

The most significant dividing line, in looking at the Constantine judges, is that separating old hadri families from those of recent rural origin. Of the Maliki 'ulama who served on the Constantine majlis between 1848 and 1860, only one—Mustafa Ben Jallul—came from a very prominent hadri family. One other, Tayib Bel Kired, came from an old, but not so prominent, family.

The four others had family ties or origins outside the city: Hajj Ahmad al-Mubarik was from a maraboutic family near Mila; Mu-

hammad Ben 'Azuz came from a prominent Mila family (Mila was a small town just north of the city); Salah Ben Sassy was originally from the region of Bône; al-Makki Bu Talibi's family came from the tribe of Bu Talib near Sétif, where his father had started out as a poor schoolteacher, and then migrated to Constantine during the reign of Salah Bey.[64]

Men such as these, it was likely, were more beholden to the political authorities for their positions, hence more malleable. Their recruitment, it should be stressed, can be traced back to Ottoman days.

The Constantine majlis of the period after 1867 was very different: it was dominated by two men from leading hadri families, al-Makki Ben Badis and Tayib Ben Wadfel. But, in that period, the majlis was far less important, the essential question being who was qadi. And in the qadiships of Constantine, it was the venerable and prestigious Ben Badis family who dominated.

The viability of the institution of qadi, in the city of Constantine, seems to derive from two sources: its relative immunity from political interference, and its being an office which tended to be filled, especially from the 1860s onward, by men of considerable social standing, a standing which was re-enforced by the contrast with the popular origins of most of the litigants. The urban majlis, by contrast, was a tribunal of peers. Litigants probably often felt themselves the social betters of some of the rural parvenus who sat on the majlis. Thus it was hard for the judges to muster respect for the institution, especially when there existed an alternative jurisdiction whose judgments were definitive, and more easily enforced.

In summary, the urban majlis appears to have been a weak institution, and this weakness, as the strength of the qadi, can be understood in the social and political context. The litigation which the majlis would lose, after 1860, to the French tribunals, often involved large sums of money, but the issues involved were in many senses trivial, on occasion absurd. Such cases might make or break the financial future of an individual family (and they usually broke it), but the issues of deep social and cultural import were those which arose most frequently before the qadi. These were the issues on which the Algerian fuqaha had to take a stand.

[64] See biographical notes at end of text.

Chapter 4

MUSLIM LEGISTS AND THE "MORAL CONQUEST"

In 1845, French officers interrogated a leader of the Dahra rebellion, seeking to understand the motives behind this sudden outbreak of violence. They asked him: "What do you hold against the French? Thefts, exactions, acts of injustice? You can tell us in complete freedom." And he replied: "None of that. We detest the French because they are not of our religion, because they are foreigners. Today they ask natives for their land, tomorrow they will ask for their virgins and their children."[1]

The exchange puts in sharp contrast differences in perception. In the French officer's view, problems arose out of essentially minor wrongs, injustices which in no way reflected the benevolent intentions of the government. "Thefts, exactions, and acts of injustice" invited complaints against the French-appointed native chiefs. But foremost in the rebel's mind was community survival, the defense of collective resources against an invader. And this particular invader was not simply a rival tribe, bent on extending their pastures and plowland, but one whose aggressive impulses, governed by a strange and alien code, seemed more far-reaching and more threatening.

As naive as the rebel's prediction may seem, it was in a sense accurate. In the 1840s, the French had seized great quantities of Algerian land and asserted the state's right to intervene in and control all transactions in land as it saw fit. In the 1850s and 1860s, the French moved to intervene in the fields of marriage (virgins) and orphans (children).

Such policies would be part of what they termed the "moral conquest." This was an eminently double-edged concept, for it suggested at the same time both conquest by persuasion, by moral means rather than violence, and also a conquest of the moral realm, the imposition of French values and of government control, even in matters of family life. It was this latter aspect which the Dahra chief seemed to anticipate. It is also crucial to note that his statement made

[1] Cited by Jérome David in speech before Corps Législatif, 12 April 1865, in *L'Africain* (Constantine), 21 April 1865.

a strong impression; for it was repeated by a former officer, Jérome David, before the Corps Législatif in Paris during debates prompted by a later rebellion in the Dahra in the 1860s.

When faced with strong opposition on the moral front, however, the French were willing to make a strategic retreat, and to content themselves with the fruits of the material conquest. It should come as little surprise to learn that the rhetoric surrounding the moral conquest was considerably inflated. But the most interesting and unexplored aspect of the skirmishes on the moral front lies in the insights they provide on the attitudes of some leading Algerian fuqaha, the main focus of this chapter.

The situation in mid-nineteenth-century Algeria was in certain respects similar to that in Soviet Central Asia in the 1920s, which has been analyzed by Gregory Massell.[2] In both instances, a government espousing "progressive" values found itself face to face with a conservative Muslim society. The Muslim subjects, if not openly rebellious, were at least uncooperative and intensely distrustful. The governments realized that the political integration of these subject societies to the metropolitan society would require their simultaneous cultural and social integration, at least if the ties were to be enduring.

For the Soviets, this required the mobilization of the dissident or oppressed within the subject society. Not finding an oppressed proletariat, they looked to the most obvious malcontents of Muslim society—women subordinated to their male kin, and orphans, whose lack of legally apt male kin made them particularly vulnerable. These were the weak points through which the Soviets sought to penetrate Muslim society.

To a remarkable extent, they at first succeeded,[3] but, in the end, they ran up against two serious obstacles: (1) what Massell terms the

[2] See Gregory Massell, "Revolutionary Law in Soviet Central Asia," in Donald J. Black and Maureen Mileski, eds., *The Social Organization of Law*, New York, 1973, pp. 226-261; and *The Surrogate Proletariat: Moslem Women and Revolutionary Strategies in Soviet Central Asia*, Princeton, 1974.

[3] Soviet policy aimed at bringing women to a fuller participation in public life—such as in sports, the theater, and the military—and at revamping the law to guarantee their rights. Reform in judicial organization brought women on to the judge's bench. From 1918 to 1927 the Soviets followed a judicial policy much like that of the French in Algeria, attempting to appoint loyal personnel to the Muslim courts, and gradually amputating particular areas of law to be handled by the Soviet courts. But, in 1927, they took the step that the French had spoken about a great deal, but never took—abolition of the Muslim courts. The backlash against these policies was led by the mullahs, the traditional religious leaders, who seem to have capitalized on the rumor potential of policies affecting women.

contradiction between incumbency and insurgency—to wit, that it is not in the interest of those safely ensconced in the boat of state power to make waves which could ony imperil safe navigation; and (2) the eventual mobilization of conservative forces who, once recovered from the initial shock, were able to borrow from the organizational and propaganda arsenal of the Soviets to shore up traditional social structures and values.

Though the French of the mid-nineteenth century were not exalted revolutionaries, they did have an egalitarian revolutionary heritage—which occasionally came to the fore, as in 1848, and which strongly influenced the values of at least some sectors of the colonial regime. And they faced a conservative Muslim society, the tensions in which were quite similar to those of Soviet Central Asia. Young girls were married against their will, and orphans could be cynically exploited, or if not exploitable, left destitute. There was, in addition, a particular group to whose grievances mid-century sensibilities were acutely attuned—slaves.

None of these groups were ever expressly treated as a potentially revolutionary constituency. In part, this was because the ideology and objectives of the French colonial regime were not revolutionary. But the lack of revolutionary thrust in French policy, and its presence in the Soviet case, must also be understood in the wider context of the evolution of Islam. In the 1850s, one could perceive only a few ripples of change in the Muslim world, embodied especially in the Ottoman Tanzimat. In the 1920s, the Muslim world was passing through a period of intense ferment, and the chief agent of that ferment was Mustafa Kemal Ataturk, the Soviet's neighbor and doubtless an influence, though perhaps not an openly admitted one, on their Muslim policies.

Rather than revolution from above, the French pursued a more modest objective of reform from above. The attendant contradiction (between the goal of reform and the fact of incumbency) was not as severe as in the case of the Soviets, but it was similar: as a regime in power, but rather precariously so, the French could ill afford to alienate such native friends as they had, or unnecessarily arouse suspicion and distrust. It was rather their methods which were most succinctly different from those of the Soviets, and in turn the response of the subject society to those methods.

One can perhaps see the French methods as reflective of the ideals of their revolution, or at least of its moderate phases. Instead of looking for a "surrogate proletariat" (or those awkward-sounding creatures, the surrogate sans-culottes), they sought out something resem-

bling the enlightened sector of the bourgeoisie, the liberal intellectuals. And they created an organism through which the progressive notables could express their approval of French proposed reforms—the Conseil de Jurisprudence Musulmane, later to be replaced by the Conseil Supérieur de Droit Musulman.

The experience of those two conseils provides a valuable opportunity for examining the attitudes of different parties to the colonial context on questions of reform in Islamic law, and the introduction of "progressive" social changes. Like the revolutionary policies described by Massell, the attempt to promote liberal reforms within an Islamic framework under the Second Empire would, with the advent of the Republic, break down. The usual interpretation, put forward at the time, and repeated uncritically since then, is that the Muslim conseillers were, like all of their kind, hidebound reactionaries, incapable of supporting reforms of any sort.[4]

This interpretation is quite wide of the mark, for such record as there is of the decisions of the two conseils shows a decidedly reformist tinge. I do not contend that the conseillers, let alone the wider class of Muslim legists, held a clear, consistent liberal or reformist ideology: the motives behind their decisions were surely mixed. Nonetheless, whatever their motives, they showed a willingness to condone changes. And the French were unwilling to take full advantage of that willingness to press for changes, in spite of their avowed commitment to moral conquest. First the military, and then the colons, were, in their respective manners, more concerned with the exercise of power than with protecting the weak and exploited.

4.1 Composition of the Conseils

The Conseil de Jurisprudence came into being in 1854, as part of a rather brief-lived phase of liberal policy. At the time, many Europeans nourished the hope that Islam could be transformed from within, that, with benevolent guidance from Europe, Muslim societies could be rescued from the slough of decadence. This wave of hope was closely tied to international events: the Ottomans had embarked on a series of liberal reforms, aimed especially at raising the status of

[4] Ageron, *Les Algériens*, p. 210, seems to be aware of inconsistencies in colon criticism of the Conseil Supérieur de Droit, but, working with fragmentary evidence, he does not seriously question the seemingly natural assumption that such a body would be conservative and passive, "preferring to be useless rather than embarrassing."

Christians within the Empire, and at securing the support of Western European powers in their conflict with Imperial Russia.[5]

While the decree of 1 October 1854 on the organization of Muslim justice stands in part as a gesture of good faith by the French to the Ottomans and to the Algerian Muslims, the creation of the Conseil de Jurisprudence gave it a French and modernist inflection. The decree enhanced the prestige and autonomy of Muslim justice; yet it also called for improvements in organization and procedure, and for a unification of jurisprudence. This unification, in the context, did not simply mean an ironing out of variations on minor points; it implied a stand against customary law,[6] and an intention on the part of the French to press for a "moralization" of Islamic law. The creation of the Conseil de Jurisprudence reflected the French desire to make Muslim justice an instrument of the moral conquest, and, at the same time, their understanding that successful moral conquest required at least a semblance of voluntary submission on the part of the conquered.

The role of the Conseil was dual: to provide the French with well-informed advice about particular legal problems, and to give a seal of legitimacy to reforms introduced by the French. The Conseil was to consist of nine Muslim legists, who would meet annually in Algiers, under the supervision of an officer from the Political Bureau of the Government-General. They were to be called upon to issue opinions on questions addressed to them by the Governor-General, and only those questions. Their opinions would be reviewed by the Minister of War, and, without his approval, they would have no force.[7] In other words, the French wanted quite specific services of these men, and were at least somewhat apprehensive lest they overstep the bounds of discretion and attempt to use the Conseil as a political platform.

The criteria for selection of members were shaped in view of this

[5] On the policies behind the 1854 decree, see Chapter 5.

[6] French North African judicial policy would later focus on propping up Berber customary law, and, because of protests surrounding the Moroccan Dahir Berbère of 1930, this aspect has become well known. But, in the 1850s, the major thrust of French policy was to strengthen state-controlled Muslim courts. The Kabylia was excluded from the 1854 decree, for it had just been pacified, and in the accords leading to submission of the insurgents the French promised to respect customary law. Only with the rising tide of "Kabylophilia" in the 1870s was this vice (in terms of French legal theory) turned into a virtue (in terms of racialist theories) going under the name of "native policy."

[7] On regulations governing the Conseil, see *B.O.A.G.*, 1854, p. 389 and pp. 395-396.

consideration. The conseillers were to be chosen from among those muftis, qadis, and 'ulama "most distinguished for their science," or, in the jargon of the day, "amis du progrès." Such men were found only in particular circumstances. Specifically, they fell into three categories: urban 'ulama (Hamida Ben al-'Ammali, Maliki qadi of Algiers; Muhammad al-'Ayashi Ben Barnu, mufti of Mostaganem; and Muhammad Larguech, qadi of Bône); Bureau Arabe qadis (Bilqasim Ben Bu Zaghti of Orléansville; Hasan Ben Brihmat of Blida; and Ahmad Ben al-'Ayad of Tlemcen); and médersa professors (Tahar Ben Gharas of Tlemcen; Hajj Ahmad al-Mubarik and al-Makki Ben al-Bu Talibi of Constantine).[8]

The reason for selection from these categories is fairly simple: médersa teachers, Bureau Arabe qadis, and muftis were all salaried. In being chosen for salaried posts, they had already been carefully screened, and, by serving in these posts, they in turn had had a chance to learn how to cope with the French. And salaries of course created a material bond between the fonctionnaire and the government. The other factor, residence in cities, and especially coastal cities, is a fairly reliable indication of considerable contact with the French, and of an outlook more cosmopolitan than might be found in smaller interior towns, such as Miliana, Médéa, or Mascara.[9]

Hasan Ben Brihmat and Islamic Modernism

The most important and interesting of the conseillers was Hasan Ben Brihmat. He was the only one of the group to be appointed to the Conseil Supérieur de Droit in 1867. He was from an old and respectable Algiers family; he served as Bureau Arabe qadi of Blida in the early 1850s, and he would long serve as director of the médersa of Algiers. In proposing him for the latter post, the Commandant of the Division of Algiers remarked: "Si Hasan is easy to direct and very intelligent; he likes ideas of progress and knows how to ally the duties of religion with the requirements of these ideas; in a word, he is an exceptional instrument." Later, he would be remembered as being "as convinced a Muslim as could be a man of progress," and

[8] At a later point, Muhammad Shadhli would serve on the Conseil, apparently as a replacement for al-Bu Talibi. See Rapport sur la médersa de Constantine, 4 March 1857, in 24 S 1.

[9] This also reflects a practical consideration, for, at the time, coastal transport was easier and safer than land transport. Not until the 1860s was major railway construction undertaken.

for having "little by little engaged himself in a moral compromise with us and [having taken] a liking to French civilization."

Fortunately, we also have a record of Ben Brihmat's perspective, recorded in a poem he wrote in praise of the Tunisian reformer Khair al-Din Pasha's *Aqwam al-masalik* (The Surest Path). The following is a rough translation of some of the most pertinent lines:

(2) You pursued the right path no matter how narrow
to the paths which preserve us from mutiny.
(3) You explained the best path and the surest,
And stood victorious for religion and country.
(5) You legislate in a way not misguided, nor merely improvised,
Rather you create customs, fine ones indeed.
(6) How lofty the law built from this precept:
The time and the popular mood, of these you take heed.[10]

These lines were written in 1284/1867-1868, the year which marks both the high tide of the liberal "arabophile" period and the onset of a series of calamities, beginning with the outbreak of famine. They give us Ben Brihmat's rationale for his tractable stance on questions of changes in the law—which, in the view of many Muslim legists, was perfect, thus unchangeable, or at least not to be changed by a pious, God-fearing Muslim. Ben Brihmat's reason for the acceptance of change was simple: to preserve his society from *fitna*, mutiny—or, in non-poetic translation, "discord" or "strife." And he wanted to protect religion (*din*) and country (*watn*).

His cleverest formulation, from both poetic and political perspectives, comes in line 5, in which he plays on the triliteral root, *b-d-'*. He tells Khair al-Din that, in making laws, "you do not improvise" (*la ibtada't*), but rather that "you create" (*ibda't*—to create in the sense of creating a masterpiece) "customs" (*sunan*, the plural of *sunna*, a term most often used in the religious sense of the sunna, or tradition of the prophet). From this same root, *b-d-'*, is also derived the term *bida'*, usually translated as "blameworthy innovation," something contrary to Islamic law or values: in this word play, Ben Brihmat suggests that the line between *re*novation and *in*novation is a fine one. And his overall message is that mere innovation will be fruitless, and that failure to change and adapt will be equally disastrous. Rather, the salvation of country and religion lies in renewal guided by tra-

[10] Hafnawi, *Ta'rif al-khalaf*, p. 114. The rest of the rather long article on Ben Brihmat, who was one of Hafnawi's teachers (pp. 112-118), is disappointingly dull. His proposal for the médersa directorship is found in Div./Alg. to GGA, 13 November 1855, in 1 II 4; the later evaluation is in the Combes Report on native education, in Sénat, Annexe 15, Session of 2 February 1894.

ditional principles, justified in traditional terms. And this was the guiding thought behind the two conseils on which Ben Brihmat served.

Ben Brihmat's subtle, dialectic thinking is of the sort which easily charms Westerners. However, in my personal experience, most Algerians value above all frankness; they distrust the facile manipulation of words. My sense is that the more popular and—in the context—successful renovator was not Ben Brihmat but al-Makki Ben Badis. The former sought to show, through subtle argument, that Islam was not backward; the latter was distinctly not a mincer of words and could, when the occasion called for it, vigorously defend the excellence of Islam.

The most succinct way of summarizing the difference between these two outstanding figures is to say that Ben Brihmat, in the fashion of Islamic modernists, borrowed principles, while Ben Badis, in practice, borrowed methods, yet ideologically remained what can best be termed an Islamic integralist. While Ben Badis clearly had more of a visible political impact (see Chapters 6 and 8), I would argue that neither of these two men's approaches was inherently more "correct" than the other, that what was important was that both men had coherent visions of how to take on the European challenge, and that it was this which allowed them to be reasonably effective spokesmen.

Further, one can recognize a combination of factors which seemed to lend itself to efficacy in both cases: Ben Brihmat and Ben Badis came from well-established urban families, and both had mastered the French language. They had firm traditional roots, but they had also acquired the tool which was, in the nineteenth-century Arab world, indispensable for cultural renovation, and, in Algeria, essential for political expression.

Other Conseillers

As for the other Conseil members, none were as sophisticated or "progressive" as Ben Brihmat. Rather, their "friendship for progress" consisted in some cases of little more than a favorable political disposition. Tahar Ben Gharas had risen rapidly from being qadi of the Trara, a mountain region near the Moroccan frontier, to the directorship of the médersa of Tlemcen. According to his recommendation for this post, he "belonged to the best religious family of the Oulassa; he has always used his influence to serve us well; he is still young, very intelligent, and better educated than is common among his coreligionists; and, moreover, the students of the town and the tribes are strongly in favor of his nomination to the post." Such

popularity on the part of a friend was quite rare, and the French evidently sought to press the advantage.

However, Ben Gharas' ascendancy was brief-lived, for in 1859 he would be revoked and indicted for corruption in his activity as a member of the majlis of Tlemcen, and sentenced to eighteen months in jail and a 1,000-franc fine.[11] This is not to say that the French had chosen a notoriously corrupt conseiller, but rather that, at this time, their links with even highly placed Muslim spokesmen were tenuous.

Bilqasim Ben Bu Zaghti, more than Ben Gharas, conformed to the French wishful vision of the enlightened marabout. He was the head of a "highly venerated" family of holy men of the Beni Rashid, near Orléansville, where he ran a zawiya. He was evaluated as follows: "a distinguished jurisconsult with a reputation for great simplicity and dignity. He is one of the greatest savants of Algeria. He is advanced enough to be favorable to our cause; he is intelligent and fully understands the stability of our establishment in Algeria." Bu Zaghti's son apparently inherited his political realism (or, if one wishes, pessimism), for in the 1864 rebellion, "he spontaneously put himself in our service and informed us of everything going on in the tribes."[12]

A more complex case is that of Hajj Ahmad al-Mubarik. Unlike most of the other conseillers, he was fairly old—about sixty-five when the Conseil was founded, and thus he had passed his formative years under the old regime. As mentioned in Chapter 3, he came from a maraboutic family near Mila. His career began with study in Constantine, passed through a stint in commerce, and then, after a pilgrimage, took him into service as a majlis member in Constantine. In 1848 he was dismissed from this post as a result of an alleged conspiracy to channel funds from the bait al-mal to Hajj Ahmad Bey, but he seems to have quickly returned to grace after the collapse of Hajj Ahmad's resistance in the following year.[13]

Al-Mubarik was a man of scholarly bent, and wrote a well-known history of Constantine. But his most important quality was probably that he was a muqaddam of the Hansaliyya order, a local Constan-

[11] For proposition, see Div./Oran to GGA, 1 August 1854, in 1 JJ 10. On revocation, see Chapter 5. The Oulassa were a tribe of Berber origin who did not support the Amir 'Abd al-Qadir.

[12] Notices biographiques, Subdiv./Orlv., 15 March 1865, in 10 H 79. On the rebellion, see below, Chapter 6.

[13] On conspiracy, see Mercier, *Histoire de Constantine*, Constantine, 1903; refusal of muftiship—Div./Cst. to GGA, 11 December 1852, in F80 1622; his scholarly work, al-Mubarik, "Tarikh Qsuntina." On origins of the Hansaliyya, see B.A.D./Cst., Report—October-December 1854.

tinois brotherhood. Hafnawi's biographical sketch on al-Mubarik suggests that he played a role in reforming or "purifying" the Hansaliyya, but this is not spelled out in detail. The important point may be that this was a local order, hence less threatening to the French than other orders whch had extensive ties outside Algeria.[14]

In considering the two other city of Constantine conseillers, al-Makki Ben al-Bu Talibi, and his replacement, Muhammad Shadhli, one is struck by certain common characteristics: along with al-Mubarik, they both taught at the médersa of Constantine, and all three had origins outside the city. Al-Mubarik and al-Bu Talibi were considerably older than the other Conseil members (by some twenty to thirty years), and Shadhli was somewhat older (about ten years). Thus one could argue that they point to a sort of continuity between the beylik and the colonial government in Constantine. The same class of rural intellectuals, drawn originally to the city by the beys, had come to serve the French in the posts which demanded the most loyalty and the most receptivity to European values and ideas.

Ben Brihmat, in contrast, represents the generation who grew up under the colonial regime and were quite thoroughly exposed to European culture and modern ideas. One must suspect that his approach to questions of change was a more active one than that of his Constantine colleagues.

For the remaining conseillers, I have insufficient evidence to offer detailed judgment as to their origins or character.[15] But the above observations should make clear that the choices made by the French tapped at least three of the major currents among the Algerian religious-legal elite: rural maraboutism, the nascent secularism of Algiers, and rural fuqaha drawn by beylik patronage to the city of Constantine.

In 1859 the Conseil de Jurisprudence was dismantled, along with the majlis, in the swing to assimilationism, but it was revived in a modified form as the Conseil Supérieur de Droit in 1866.[16] The latter was also to operate in a consultative fashion, but instead of being consulted by the Government-General on questions of a general nature, it was consulted by French courts on specific points of law in

[14] See notice nécrologique on Bu Talibi in *L'Africain*, 11 April 1865.

[15] Ben Larguech came from a wealthy Bônois family, who owed their wealth, in large part, to the generosity of the beys. I suspect that the French would have preferred Muhammad Ben al-Qadi from Batna, but he declined an offer of a place on the Conseil. See Subdiv./Batna to Div./Cst., 5 December 1854, in 10 KK 32. On Ben Barnu, see section on slavery below.

[16] On the assimilationist phase and reactions to it, see Chapter 6.

specific cases. Once the consultation had been issued, the French court (now the court of last resort in all Muslim matters) had to take account of it in their decision. Also the Conseil Supérieur de Droit was called upon to assist in various facets of the operation of the Muslim judicial system, such as setting a curriculum of study for aspiring Muslim magistrates, preparing and administering examinations, and preparing a handbook for the writing of judgments.[17]

The Conseil proper consisted of only five members, and they were required to live in Algiers, since in theory they might be consulted at any moment. Thus, though the position paid quite well (some 4,000 francs per year), it was not easy to recruit candidates from outside the capital. One can find among the proposed candidates Tahar Ben al-Mahfudhi, one-time katib of the Mascara majlis, who, since he was dismissed in the 1858 scandal, had fallen on hard times, and was now living in poverty, depending on the gifts of wealthy families.[18]

In its final composition, the Conseil was a rather mixed bag. There was of course that stalwart of reform, Hasan Ben Brihmat. But there was also Shaikh Ben al-Din of Laghouat, who had been a student of Muhammad Ben al-Sanusi, and was suspected of being an agent of the much-feared Sanusiyya brotherhood.[19] Sadiq Ben 'Arbia was a prominent faqih of Miliana, and, like Ben al-Din he had been a majlis president in the 1850s. Conceivably, the French felt that these men were owed favors, since they had been rather peremptorily relieved of their jobs in the early 1860s.

Muhammad Ben 'Abdallah al-Zaggai was, at the time of his nomination to the Conseil, director of the médersa of Tlemcen, but beyond this was a little-known figure. The least explicable of the choices was Muhammad al-Khubzawi, who had never held an important post up to that time. Originally, he came from the tribe of Hazedj (subdivision of Sidi Bel Abbès), but at some point he had moved to Tlemcen. After the eventual dissolution of the Conseil in 1876, he became qadi of Perrégaux, near Mascara, but proved of questionable

[17] Almost all published comments on the Conseil Supérieur de Droit can be traced to Charles-Louis Pinson de Ménerville, *Dictionnaire de la législation algérienne*, tome 3, Paris, 1872. On the handbook, see *Mobacher*, 29 March 1869. The first examination was prepared by the Conseil with two jurists, Letourneux and Robinet de Clery.

[18] See Div./Oran to GGA, 30 April 1867.

[19] On Ben al-Din's Sanusi connection, see Subdiv./Med., "Rapport sur le Cheikh Mohammed Ben Senoussi" (1863), in 50 II 254. In the 1880s, there would be a virtual phobia about the Sanusiyya. For background, see E. E. Evans-Pritchard, *The Sanusi of Cyrenaica*, Oxford, 1949. The founder, originally from the Medjaher near Mostaganem, taught in Laghouat while on his way to Mecca.

competence, and was demoted to bash-'adil in Tlemcen. Probably his presence on the Conseil reflected mainly the difficulty of finding any more suitable candidates.[20]

The difficulty was not simply one of persuading men to come and live in Algiers. It was also an indication of a change of attitude among a certain sector of the Algerian legists. For the most striking factor in the composition of the Conseil is the lack of men from Constantine. Unfortunately, the correspondence for the Division of Constantine of 1867 is missing from the archives, but one can still conjecture as to the reason for the absence of such a highly qualified group.

As I will explain in Chapter 8, al-Makki Ben Badis had by now become a dominant figure in Constantine. When Muslim notables argued in 1865 for the re-establishment of a sovereign majlis jurisdiction, it was in all likeiihood he who was the most vociferous in pushing the demand. The Conseil Supérieur de Droit, however, was merely a consultative body, and thus little more than a symbolic gesture as far as he was concerned. His wide influence may well have kept Easterners from the Conseil.[21] But, whatever the reason for the lack of men from Constantine, the Conseil de Droit had less depth and less consistency and was less representative than its predecessor.

4.2 Facing the Issues

While no firsthand information is available on the proceedings of the Conseils, in either Algeria or France, it is possible to put together, from the military archives, many of the questions addressed to the Conseil de Jurisprudence, and a few key decisions of both bodies.

Some of the questions raised by the regional commandants to be sent to the Conseil de Jurisprudence were strictly procedural: such as whether a Maliki qadi could hear a case brought by a Hanafi, or whether the size of the majlis could be reduced. Some reflected regional concerns: in the cercle of Bougie, for instance, the friction between the shari'a and Kabyle customary law was particularly serious. But the most widely recurring questions were those having to

[20] See Div./Oran to GGA, 17 September 1881 and 26 May 1881 (Confidential), in 1 JJ 57. Reports of his disloyalty kept him from regaining the office of qadi, and he evidently blamed Ben Sha'ib, qadi of Tlemcen. See Hafnawi, *Ta'rif al-khalaf*, tome 2, p. 147. A later member of the Conseil was 'Ali Ben al-Hajj Musa of Algiers. Unsuccessful candidates were Muhammad Ben Tayib of Médéa and 'Abdallah Ben Jama'a of the Beni Ider (Djidjelli).

[21] Ben Badis would serve on the Gastambide Commission in 1865. See Chapter 6. All of his recorded comments show him to be pugnacious and uncompromising.

do with marriage and divorce, and in particular the question of a minimum age for marriage.[22]

The two opinions issued by the Conseil de Jurisprudence, of which I have found record, involve the question of marriage age, and that of the establishment of orphanages. Thus, my agenda of questions touches on why the age of marriage proved such a critical issue; why the matter of orphanages was put to the Conseil, even though it did not seem to be of universal concern; and what attitude the Muslim legists and the French took on these questions. I will use for comparative purposes the issue of slavery, largely because it serves as a convenient contrast, and helps to elucidate the attitudes of the parties involved.

Slavery

To begin with the simplest, most straightforward question, slavery: this was the only social issue which the French did in fact tackle head on—though even here, there was a certain amount of foot-dragging.[23] It was in a fit of idealist fervor in 1848 that France abolished slavery. As it existed in Algeria, slavery was quite a different matter from that in the West Indies, the principal target of the decree of abolition. Algerian slaves were seldom used for agricultural labor, but rather were involved mainly in domestic or personal service. The majority were women, and many of these were concubines. The owners, to judge from the cases involving slaves in the Mascara register, were mainly the wealthy and powerful.

Because of slavery's apparently benign nature in Algeria, and because those most likely to be alienated by strict enforcement of abolition were also France's major political allies, the military were willing to tolerate it, and attack only the trade itself, which was largely an affair of the Mzabis and the guardians of the desert highways, the Tuareg. This tolerance was not simply a matter of officers in the field making life easy for themselves; it was ordered by the Minister of War in official instructions of 2 February 1849.[24]

[22] For questions addressed to the Conseil, see Subdiv./Set. to Div./Cst., 2 November 1857, in 40 KK 10; Subdiv./Bat. to Div./Cst., 9 September 1857, in 10 KK 33; B.A.M./Boug., Report—July-September 1857, in F80 505; B.A.D./Cst., Report—October-December 1856, in F80 509; Subdiv./Tlm. to Div./Oran, 1 July 1856, in 1 J 55; Div./Oran to GGA, 31 May 1855, in 1 JJ 10, and 28 September 1857, in 1 JJ 11.

[23] There are seven cases involving slaves in the Mascara register (46 E, 74 E, 36 B, 131 B, 7 F, 82 C, and 154 B).

[24] See Proc. Gen./Alg. to Garde des Sceaux, 5 August 1850, in F80 1610. Brief

Thus abolition might long have remained a dead letter in Algeria, had it not been for two special factors: that the military did not possess a monopoly of power; and that the slaves themselves were of course eager for freedom. The judiciary in particular posed as champions of emancipation, though not as a matter of policy dictated from above. In some cases, it was a matter of an individual judge's personality; and, in others, it was the pressure of colon public opinion which led magistrates to intervene in military territory in order to free slaves, or to take up the defense of slaves who had escaped from military into civil territory.[25]

After the announcement of the abolition decree, civil territory (in other words, the major towns) quickly became a refuge for discontented slaves, for there they knew that their former masters could not exercise unchecked power. But, even in the face of such clear manifestations of a desire for freedom, the military did not lend their weight to emancipation. One might consider the following case, recorded in Mascara on 6 April 1855, nearly seven years after the abolition of slavery:

> Salim, slave of the faqih al-Sayyid 'Abdallah Ben al-Makki, ran away to Oran, and sent word through the Captain of the Bureau Arabe in Oran to the Captain of the Bureau Arabe in Mascara, asking that his children be separated from his master. Their dispute continued until one went between them who desired a recompense from the generous master, and brought them to an agreement. They agreed that the slave would accept to stay at his master's house, and would pay no attention to words of slander, rebellion, and dissolution (*li qawl al-wishat al-maradin al-shitat*), and would work in accordance with his strength as he used to, and would not run away, or do anything like he has done.[26]

But there was also a factor not as easy to evaluate as a slave's running away, or a juge de paix's foray into a rural market. This was the attitude of the fuqaha, and especially the urban fuqaha (as op-

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treatments of slavery can be found in M. Emerit, "L'abolition de l'esclavage," in *La révolution de 1848 en Algérie*, Paris, 1949, pp. 29-40; and X. Yacono, "Un affranchissement d'esclaves à Alger en 1847," in *Revue d'histoire maghrébine*, 1 (1974), pp. 77-80. On Mzabis and the slave trade, see Subdiv./Med. to Div./Alg., 19 June 1872, in 50 II 73.

[25] Perez, juge de paix of Tlemcen, fresh from France, intervened to free some slaves brought in from Morocco. See Proc. Gen./Alg. to Garde des Sceaux, 5 August 1850, in F80 1610. On public opinion, see Div./Oran to GGA 28 September 1857, in 1 JJ 11.

[26] Sijl, 18 Rajib 1271 (32 D).

posed to their rural confreres, such as the slaveowner mentioned above), whose attitude was important, since they would be called upon to decide cases arising between rural masters and former slaves who had fled to town.

On this score, I have come across one interesting incident. The fuqaha of Mostaganem—which meant above all Ben Barnu of the Conseil de Jurisprudence—cooperated with the Sub-Prefect in annulling the marriage of a black woman who had fled to civil territory, to her former master.[27] Thus not only did they in effect support a slave's demand for freedom, but they recognized a crude disguise for slavery—marriage—for what it was, and acted accordingly.

It is also of interest to ask how the urban notables reacted to the emancipation of their own slaves. A revealing incident in Constantine permits an answer in one major case. As explained in Chapter 3, former hadri masters reacted to their slave's walking out by refusing to have anything further to do with them, either as masters or as employers. Why did they take this stance? There may have been a pragmatic economic motive; many of the urban notables were growing poorer and probably could no longer afford such conspicuous consumption. But ideological considerations may also have entered their thinking; for emancipation of slaves conforms both with the spirit of the Quran, and at the same time could be presented as a manifestation of modern, civilized attitudes.

The more sophisticated of the notables may well have understood that acceptance of emancipation would help them to win some respect in French eyes. But their action also had something of the arrogant and aristocratic about it, and it bore an underlying conservative message. Those groups within Algerian society who listened to "words of dissolution" and attempted to use the colonial situation to further a particularist interest would be looked on unkindly. Here we might see the 'ulamist social vision in embryo: egalitarian, but with little tolerance for minorities whose self-assertion threatened the united front of the Muslim community.[28]

[27] Div./Oran to GGA, 8 February 1859, in 1 JJ 12. For a similar case where a rural qadi reached an opposite decision, see Subdiv./Set. to Div./Cst., 20 June 1866, in 40 KK 19.

[28] Clashes between minority groups and the Sunni majority in Constantine are closely interwoven with the development of nationalism there. Most important were the Mzabi disturbances of 1887 (see Chapter 8) and the Muslim-Jewish clashes of the 1930s. There are few blacks in Constantine today, and this may have to do with the Islamic reformists' dislike for their involvement in ecstatic brotherhoods, and in traditional ritual activities of questionable orthodoxy.

Orphanages

Algerian orphans were made famous by Cardinal Lavigerie, who took in a good number of them after the famine of 1867-1868, in the hope of making converts. But the question of establishing orphanages had long been under discussion by the time of the Lavigerie experiment. It is likely that the preoccupation with orphans began in the cities, and that some of the earliest suggestions for establishing orphanages came from the civil Bureaux Arabes of Constantine and Algiers, whose reports paint a despairing picture of urban life in the 1850s.[29]

The proposal to establish orphanages was one of the first acts of the Conseil de Jurisprudence, coming in late 1856. One might thus assume the issue to have been an uncontroversial one. However, when the Governor-General communicated the proposal to local commandants, they rejected it as both useless and impolitic, at least in the rural setting.[30] According to the commandant of Mascara, such institutions were appropriate only in towns, "to which flow vagabonds . . . forced by misery or misconduct to flee from the tribes, and where difficulties of material life, the high cost of everything, destroy familial instincts, and lead to a spread of egotism." In the tribes, he said, "the family is so well constituted, and so compact, that the kinship ties of even the poorest extend not only to members of the duar, but to the entire tribe."[31] Recalling the dispersion of the Hachem families during the hijra to Morocco, he lauded that devotion to family which had sent men as far as Médéa in search of children whom they had left behind.

The reaction of the Commandant of Sidi Bel Abbès gives further insights into the orphanage question:

> The idea of such an establishment seems to me as just as it is moral. But to try this at all points of the conquest at the same time would be to throw oneself in the face of serious obstacles, and to create popular discontent among people who will not understand, for a long time, the goal and advantages of such an institution. In the large population centers, where reciprocal interests have brought

[29] See Y. Turin, "Enfants trouvés, colonisation et utopie," *Revue historique*, 496 (1970), pp. 329-356. On urban social problems, see Chapter 3.

[30] For a reference to the Conseil's opinion, see Subdiv./Msc. to Div./Oran, 15 November 1857, in 30 JJ 126. The Governor-General's dispatch establishing an inquiry on the question was dated 23 November 1856, shortly after the Conseil's session.

[31] See Subdiv./Msc. to Div./Oran, 15 November 1857, in 30 JJ 126; for similar objections, see Cercle/La Calle to Subdiv./Bône, 15 December 1856; and Subdiv./Bat. to Div./Cst., 21 January 1857, in 10 KK 33.

> closer the native and the European, in the big cities of the Eastern province, where the introduction of our methods has created less resistance on the part of the Arabs, an orphanage for young Muslim girls can stop many cases of precocious prostitution, and give the conquered people a lofty idea of our moral principles. But in the Province of Oran, the same necessity is not felt.[32]

Clearly the particular target of the proposal was not so much orphans in general as girl orphans, and girl orphans bring to mind the problem of prostitution. Orphan girls were associated with Algiers (large population centers) and Constantine (the only big city in the East), and native receptivity to French ideas concerning orphans seems to have been concentrated at the same points.

Thus one might conclude that the Conseil's favoring of orphanages—a notion which, one assumes, would have struck a Western marabout as odd or even dangerous—was attributable to the urban members, who were aware of the cities' social problems and amenable to French recommendations as to their solution.

However, one might detect another dimension to the proposal: for orphanages, like any good social panacea, required funding. This, the Conseil recommended, should come from the centimes additionnels, a supplement to the ad-valorem tax on native agricultural land and flocks in military territory. It is only natural that the conseillers should seize the first opportunity to claim for themselves control of even a small part of the budget to which their fellow Muslims contributed so heavily.

However, this method of funding posed an additional obstacle to the establishment of orphanages, for the centimes additionnels were collected in military territory, while the only prospective source of orphans (according to the military, who presumably had other ideas about how money should be spent) was in the cities. And there, in theory, orphanages should have been supported through municipal taxes, or (as would be suggested in the 1860s) through the revenues of the former habus, now controlled by the Domaine. But, during discussion of budget allocation, European concern for the fate of street waifs tended to plummet. Thus, by the time famine struck in the late 1860s, little progress had been made toward the establishment of Muslim orphanages, so Lavigerie would have a more or less free field.[33]

[32] Subdiv./S.B.A. to Div./Oran, 20 December 1856, in 60 JJ 12.

[33] *Complaint against centimes additionnels funding*—Subdiv./Msc., *same as note* 31. On habus funding, B.A.M./Cherchell, Report—January-March 1865. For a de-

What is difficult to know is whether the fuqaha of the Conseil de Jurisprudence included in their rationale for supporting orphanages any considerations of a political or moral order. If they had a keen understanding of the French—and I believe this to be the case at least for Ben Brihmat and Ben Barnu—they realized that the Catholic clergy nourished hopes of converting young Muslims, and that one of their favorite opportunities for such tasks was the orphanage. State-sponsored Muslim orphanages stood as a possible means of averting a major Catholic effort in this field.

Plans put forth for an orphanage in the city of Oran confirm that the Conseil's orphanages were to be a distinctly Muslim affair, and more particularly an affair of enlightened Muslims who had adopted certain European values. The orphanage was to be staffed by Muslim "patronesses," an Algerian version of the dames de charité, who were to be chosen from among the wives of the évolué Muslim notables of the city. The orphanage was to be built just outside the native faubourg of Oran, in order to avert native suspicions about religious education, and to make access easy for the patronesses. And, for good measure, a "marabout" to be chosen from among the Muslim clergy of the city was to be attached to the institution.[34]

As to the moral aspect, the proposal may have implied a criticism of backward tribal ways, in the same sense as did the 'ulama's favorable treatment of women in divorce cases. But one could also argue that protectiveness toward women, implied in the idea of a girl's orphanage, while it may seem liberal, reflected more a notion symbolizing urban Muslim conservatism—that women should be kept behind walls.

Child Marriage

Concern for the protection of vulnerable young women emerges yet more sharply in the question of child marriage. The phenomenon was apparently widespread, though the serious problem, the actual consummation of such marriage, was probably rare, and met with universal reproval.[35] The question involved moral, clinical, and legal notions, and on the first of these points there was unanimous con-

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mand for orphanages citing heavy Muslim fiscal contributions, see Con. Gen./Alg., session of 22 September 1866. The demand was probably raised by Ben Brihmat.

[34] Div./Oran to GGA, 25 January 1857, in 1 JJ 10.

[35] For example, see B.A.M./Orlv., Report—July 1856, in F80 475; and B.A.M./Bogh., Report—October 1857, in F80 475.

demnation of the consummation of a marriage with a physically immature girl.

As to just what constituted immaturity, that had once been left up to the tribal matrons to assess in their own particular manner. But the French had introduced doctors and hospitals, and with them medico-legal evidence, an idea which was rather unaccustomed and perplexing, at least to the rural faqih from the region of Orléansville, who wrote the following:

> Muhammad Ben Jallul married the little girl who cannot be entered (*al-subia al-saghira allati la taqdir 'ala dakhul*) by the name of Miriam Bint Qadur . . . for a sadaq of thirty durus, and he agreed with her father not to enter (consummate the marriage) for a period of two years. This is recorded in a document of Si Ibn Musa. After a year, he entered her, and he did what a husband does . . . and she could not, and he forced her, and a lot of blood came out of her, more than is usual. When her mother and father took this matter to the khalifa, he ordered the imprisonment of the man, and that the girl's father return what he had taken (the sadaq). Her father pays the thirty durus . . . and the girl is divorced.[36]

Here the writer seems ill at ease in handling the clinical concepts, and one must suspect that some of the phrases are simply awkward translations of such French terms as "non-nubile." But the writer returns to his natural flow and vocabulary when he returns to concepts and terminology drilled into him through years of recitation in the zawiya.

When it came to the legal dimension, there was considerable confusion and misunderstanding. In Islamic law, marriage involves two distinct steps: the contracting of the marriage, which includes the fixing of the sadaq, and can take place before the actual marriage; and the actual celebration of the marriage, which could occur only once the couple had reached maturity.

The problem arose in that sometimes a father, doubtless pressed by poverty, would agree to release his daughter to the man before she was mature, with the stipulation that he not consummate the marriage before a certain period of time had elapsed. Most of these marriages, it can be assumed, were entered into by men interested mainly in domestic labor—little Algerian hands, like those of Lancashire girls, were nimble on the loom. But Algerian men—just as

[36] Register of the Bureau Arabe qadi of Orléansville, 72 II 25, 11 Safar 1271.

English mill supervisors—were not exempt from an occasional brutal surfeit of passion.

One might think that the logical, civilized response was, as the khalifa did, to punish the occasional brute. But the French judged that the problem lay elsewhere, in the law itself, so they turned the question over to the Conseil de Jurisprudence. These Muslim legists opined, in their first session in 1856, that the minimum age for marriage should be set at seventeen for men and fifteen for women, a decision which stands as a considerable step in the direction of legal reform.[37]

Their decision was relayed to local authorities by Governor-General Randon in a circular of 1857. However, this circular added some new twists to the matter, for it was only a circular, not a regulation or decree. As explained by the Commandant of Mascara, it only "posed a principle to which one can refer so far as permits the moral state of the population." He went on to instruct his subordinate in Tiaret "to judge in which tribes in your cercle this principle can be applied without inconvenience." The officer in Tiaret had apparently gone beyond the call of duty, for he was ordered to "stop investigations which may bring disquiet into families."[38] The tribal family, one had to understand, was still in a primitive state, and had to be the object of a policy of accommodation.

But the real rub of the Randon circular was not that it called for selective application of the reform, but that it put the entire burden of assuring its execution upon the qadis. When non-nubile marriages were discovered, with or without consummation, it was not the father of the girl, or the husband, but the qadi who was to bear the blame.

Since the Randon circular posed only a principle concerning marriage age, the question continued to be debated. In 1863 the Governor-General asked that the local authorities consult with the fuqaha on this question. The Commandant of Oran reported back that those in his province, for the most part, objected to the tenor of the new project. Islamic law, they pointed out, forbids the celebration of marriage before puberty; thus any new regulations would bring no significant improvement. And they added that,

> on the contrary, this would create serious problems, because it would run against the established usages, and hurt the interests of the population. . . . The head of a tent, in providing for the possibility of his untimely death, wishes to assure the future of his

[37] Div./Oran to GGA, 26 August 1858, in 1 JJ 11.

[38] Subdiv./Msc. to Div./Oran, 17 March 1861, in 30 JJ 129.

children, and to be certain that after his death, his properties will not be divided up, and will not pass into the hands of strangers.[39]

In other words, marriage was an integral part of family economics and politics, and no interference in this matter could be tolerated. As for non-nubile girls, the Islamic shari'a protected them as well as any other law.

Among those consulted, only the predictably cooperative médersa professors dissented from this dominant view, and entirely approved of the regulation. One other Oranais faqih supported the project, but with reservations. This was al-'Ayashi Ben Barnu, of Mostaganem, former member of the Conseil de Jurisprudence. His criticism was an incisive one, and shows that he understood the ulterior motives with which the French could approach the problem of child marriage. Article 5, he said, was totally unacceptable—it called for the jailing of qadis guilty of consecrating such marriages.[40]

Article 5 is best understood in the context of government-qadi relations. Naturally, the French were concerned with closely controlling Muslim judges, with making sure that they served the regime's interest and did not contribute to making any problems. Yet, in accomplishing this end, they did not wish to use the arbitrary methods of the Turks. Thus, when accusations were made against qadis, officers were required to be sure that the accusations could be substantiated. The most frequent complaint—that the qadi had taken a bribe—was usually difficult to prove. The non-nubility of a bride, however, could be verified de visu.

The case of 'Ali Ben Safir, qadi of Saida, is typical. The Commandant explained that Ben Safir "was clever enough to not permit a chance to gather sufficient evidence of his corruption." But the officer had discovered a case of child marriage, "whose effect was to create a temptation of monstrous action." (It had not been consummated.) Ben Safir was thus suspended for two months.[41] In his case, as in numerous others, child marriage served as a convenient pretext for discipline; the real problem was scarcely touched on, for it was considered contrary to the "politique des ménagements" to discipline fathers or husbands in such cases.

Thus what had begun as a question of morality and protection of the weak quickly evolved into a reaffirmation of authority. On the

[39] Div./Oran to GGA, 2 December 1863, in 1 JJ 14.

[40] *Ibid.*

[41] Subdiv./Msc. to Div./Oran, 5 May 1860, in 1 J 21. His son suffered the same fate twenty-four years later: 8 September 1874, in 1 J 23.

one hand, the Algerian pater familias was not to be challenged in his prerogatives in a serious way. On the other, regulations aimed against child marriage were used to affirm the government's authority over the qadi. Marriage regulations stood as a sort of ever-present club which could be used to prod a judge back into line or, if necessary, to get rid of him.

Why, then, did the Conseil de Jurisprudence cooperate in elaborating the project on minimum marriage age, though this constituted a departure from Islamic law, and though they must have known that it was contrary to tribal mores? Again, one can conceive of both political and moral angles. From a political point of view, it can be seen as an attempt to pre-empt the French, to take a position so advanced that the French could not object or take their decision as evidence of the backwardness of Islam. In a sense, they may have been carrying out their own "politique des ménagements," bending to accommodate the French. This same tendency was to appear in the Conseil Supérieur de Droit, but in the later period the effort at ménagement proved of no avail.[42]

4.3 The Conseil Supérieur de Droit and the Great Sleeping Baby Debate

While the most important achievements of the Conseil de Droit, in the course of its existence from 1867 to 1875, were those of an administrative order—such as the preparation of a qadi's handbook—it will doubtless always be best remembered for its pronouncement on the sleeping baby question. The sleeping baby, or "bou mergoud" in Algerian Arabic, refers to a rather quaint legal doctrine, but one which for all its quaintness was rather widespread in use.

Stated simply, if a woman bore a child after being divorced or widowed for a considerable period of time—as long as four or five years in some cases—the infant would be proclaimed to have been "asleep." Thus children born out of wedlock could be assured legitimacy and an inheritance share. It was a legal fiction, to be sure, but it achieved a praiseworthy enough social purpose.[43]

It was with considerable relish that colon critics of Muslim justice pounced on the decision issued by the Conseil Supérieur de Droit in 1869. The Cour d'Appel of Algiers had received a case involving a

[42] One could argue that the conseillers simply did what they were told. But the character of their decisions points to their having received only suggestions, and then overreacting to them.

[43] For an exposition of the doctrine and its practice, see Gaudry, *La femme chaouia.*

woman who had born a child fifteen months after the death of her husband, so the Conseil was asked for its opinion. They replied that the legally admissible period of gestation was from six to nine months.[44]

Pinson de Ménerville, President of the Cour d'Appel, later commented rather smugly that the decision was not only contrary to Islamic law, but that, in limiting gestation to nine months, it gave a woman less time to produce a baby than that supreme product of enlightened humanity, the Code Civil (which allotted 300 days to the enterprise). And he added sardonically that the government had spent 140,000 francs over a period of five years on this institution, in which time it had given birth to only nine decisions: 15,000 francs a piece for decisions which managed to agree with neither the shari'a nor the Code Civil was too much.[45]

Ménerville's sarcasm was echoed by colon politicians in the chambers of government, from the provincial Conseils Généraux to the Assemblée Nationale. They saw an institution such as the Conseil Supérieur de Droit as a derogation to French sovereignty, to say nothing of a waste of public funds, which they thought would be better spent on the establishment of a French law school in Algiers. In his attack on the Conseil in 1875, the colon deputy Jacques did not even have the decency to report the facts correctly. The Conseil, he claimed, "decided that a child could sleep in its mother and still be considered legitimate four or five years after the death of her husband."[46] Only the original quaint doctrine, it seems, could arouse sufficient scorn to achieve his ends.

The Conseil's decision on the sleeping-baby question probably arose out of the same concern for pre-empting the French as was reflected in the earlier stances on child marriage and orphans. They wished to prove that Muslims could adapt themselves to European values and reconcile law with science—even if, as in this case, it meant the abandonment of an essentially humane legal doctrine.

Such a strategy was reasonably well adapted to the situation prior to 1871, when the legists had been dealing primarily with the Governor-General, who would generally respond favorably to signs of pliability on the part of Muslim leaders. But the end of the Empire had thrown Algeria into the vortex of parliamentary politics, and

[44] See *Le Temps*, 20 January and 27 March 1869. The unusual publicity accompanying the case suggests the existence of a deliberate campaign to undermine the Conseil.

[45] Ménerville, *Dictionnaire* (1872), p. 199.

[46] Jacques, in Assemblée Nationale, 20 July 1875.

now colon civilians, little concerned, *at this time*, with ménagements and often dogmatically opposed to any and all Islamic institutions, had the upper hand. And Algerian Muslims had no representatives in parliament to respond to the colons. The Conseil was dissolved in November 1875, with no debate.[47]

4.4 The End of the Era of Accommodation

One might envision the problem of Islamic law reform in Algeria as involving four principal actors. At the center were the French administration and their native affairs experts, on the one hand, and the fuqaha of the Conseils, on the other. Behind these stood the colon and Muslim publics. Each of the parties at the center was willing to make compromises—one might even say that they were so eager in this respect that they often wound up working at cross-purposes. Their accommodating stances were strongly affected by the threats they perceived in the background: French administrators feared tribal rebellions and the agitation of the brotherhoods, and the Muslim fuqaha feared an onslaught against Islam by the colons or the church. This situation was clearly not conducive to successful law reform.

Only in one case, slavery, where the issue was clear and those affected by the change were willing and able to claim their rights, did a reform prove effective. But even here, full emancipation in the Tell took at least twenty years, and in the South it was not achieved until Algeria's independence. On more complex issues of family law, very little real change had occurred. Where changes did occur in law or in social practice—for instance, with the apparent abandonment of polygamy in the cities—[48] it was not the result of government policy.

How did the background actors respond to this dialogue of the deaf at the center? Colon politicians paid no heed to signs of change in a progressive direction. Rather, they proclaimed that Muslim justice had seen its day. Islamic law, which the creation of the conseils implicitly saw as ameliorable, would now be proclaimed, in front of

[47] In 1874 Lucet and Jacques presented an amendment to the budget dropping the Conseil. However, the budget commission postponed the measure to the following year, in order to verify information presented by the colons. Evidently the eventual inquiries were not very thorough, since the misrepresentations of the colons were never brought to light.

[48] The Commandant of the Cercle of Constantine reported that polygamy had virtually disappeared in town. See Cercle/Cst., Inspection Générale—1871, in 32 KK 20. On long term decline, see Dominique Tabautin, "La polygamie en Algérie," *Population*, 29 (1974), pp. 313-326.

the Assemblée Nationale, to be "nothing other than legislative chaos." In 1875, a former Oranais magistrate, Charles Roussel, condemned the "reactionary period" which had seen the creation of the conseils, and went on to persuade the readers of the prestigious *Revue des Deux Mondes* of the need for the unification of all jurisdictions in the hands of French judges, in other words, the elimination of the qadis. Once this was done, he argued, "Islam will be no more than a particular religious form, the Quran the expression of a metaphysical dogma . . . , the evangel and breviary of the Muslims, not a social and political charter."[49]

In spite of all their energetic denunciations of Islamic law, the colons and the French judiciary were remarkably insistent that Muslims keep their personal status law. While they presented this as a position of enlightened tolerance, it was surely related to a fear that full legal assimilation would lead to full political rights, and to a hope that the fragmenting effects of Islamic inheritance law could be used to break up property held in indivision, and thus foster sales.[50]

While the sleeping baby was often called to the stand to testify as to the barbarism of Islamic law, the real question was not one of law or morality, but of who would benefit from control of judicial decisions. The sleeping baby for the colon politicians, much like the non-nubile bride for the military, and was largely a pretext, in the latter case for disciplining the qadis, in the former for working toward their elimination.

The reaction of the second background party, the ordinary rural Algerian Muslims, is hard to detect. Only occasionally does one gain a glimpse, through military reports, of how they could perceive matters. In August 1858, for instance, there came reports from the region of Collo regarding very peculiar rumors circulating in the duars. It was said that the French planned new taxes—on beards, on wind for winnowing grain, and on dogs and cats.

> And oddest of all, it was said that the French would parade two giant men from tribe to tribe, bridled and harnessed in the fashion of stallions, and that the natives would be forced to let their wives be fecundated by them, in order to improve the race of the country . . . , and that since the French wanted to leave nothing unpro-

[49] Charles Roussel, "La naturalisation des indigènes en Algérie," *Revue des Deux Mondes*, 118 (1875), pp. 920-921.

[50] This strategy is evident in numerous discussions of the Loi Warnier. See the deposition of Admiral de Gueydon before the La Sicotière Commission, Assemblée Nationale, session of 22 December 1872, in *J.O.R.F.*, 1 May 1875.

> ductive, widows would be fecundated by robust Negroes, and the best-looking children would be taken to serve as soldiers.[51]

It was reported that the man responsible for the rumors was from Constantine, and that in hashish-inspired visions he had seen three saints, Sidna 'Aissa (Jesus), Sidi 'Abd al-Qadir (patron saint of the Qadiriyya tariqa), and Sidi Ben 'Abbas, who had instructed him to go out to the countryside, and preach that the hour of deliverance was near. The themes which he wove into his vision incorporated many current French policies, which were no doubt of concern to his audience: attempts to improve Algeria's equine stock by sending stallions through the tribes, the recruitment of Tirailleurs Indigènes, the creation of orphanages, and the regulation of marriage.[52]

One should not assume that tribesmen took all of this at face value. The point is rather that law reform closely affecting family life could easily be forged into a propaganda tool, as it lent itself to distortions. The military generally understood the dangers associated with law reform, perhaps even exaggerated them. They did not wish to take risks or devote resources to the pursuit of such a project. To use Massell's terminology, they acutely sensed the contradiction between "incumbency" and, in a social sense, "insurgency."

The decades following the advent of the civil regime in 1870 would see the rise of a new legal question, naturalization, and a drastic change in Algeria's political framework, as parliamentary politics and political journalism came to the fore. Muslims would gradually come to understand these devices, and demand the right of access to them. And, ironically, as they became more sophisticated politically, they would retreat to a more forthright social conservatism, and, with but few exceptions, oppose mass naturalization. One French educated notable is reported to have explained his stance in the following way:

> We will never become naturalized because we do not want our daughters to be married before the French officer de l'état civil. It is not in our customs, and the obligation we would have to produce our daughters and wives in public will always be an obstacle to our acceptance of marriage as it is regulated by the Code Civil.[53]

[51] Situation politique, 26 October 1858, in 1 H 15.

[52] Improving the equine stock was a pet project of Randon. One wonders if the hashaishi made up his weird image on hearing that the government sought to discourage "les accouplements trop souvent prématurés," pony marriage, so to speak. See Marshal Randon, *Mémoires*, Paris, 1901, tôme 2, p. 115.

[53] Adrien Leclerc, "Des indigènes musulmans de l'Algérie," in *Congrès international de sociologie coloniale, Paris 1900*, Paris, 1901, tôme 2, p. 115.

The devotion to preservation of the community links the Dahra rebel of 1845 and this French-educated notable of 1900. To both, women stood as a symbol of the community. The fuqaha of the conseils were also, in their own fashion, committed to the defense of the community and its women. Their acceptance of reform was in part a pragmatic means of defending the autonomy of Muslim justice, but also, I think, came from a desire for change, and an admission that improvement in the law was possible.

With the dissolution of the Conseil Supérieur de Droit Musulman in 1875, the Algerian Muslims lost the only institution through which they could even make a semblance of governing their own process of social and legal change. From this time on, the Government-General and the Court of Algiers, lacking legitimacy in Muslim eyes, feared to impose major changes in family law. And the Muslims, lacking access to independent legislative and judicial power, settled in for the duration behind a stubborn defense of tradition.

The stance had already been announced by al-Makki Ben Badis in 1865, when he announced acerbically: "If the Muslims have not changed anything in their law, it is because they did not want those changes, and they ask themselves what interest others might have in bringing about such changes."[54] All that would be left, after 1875, even for the progressive figures, such as Ben Brihmat, was the office of qadi. Even the qadis, as we shall see, did not easily survive.

[54] Al-Makki Ben Badis, in Con. Gen./Cst., 3 October 1865.

Chapter 5

INTERVENTION AND CRISIS 1854-1859

The decree of 1 October 1854 was at once a concession to the Algerian Muslim community and the first French attempt systematically to intervene in the workings of Muslim justice. The concession—sovereignty for Muslim justice in all civil affairs—aroused strong opposition from the colons and the French judiciary, and was short-lived. The intervention—the grafting onto Muslim justice of French principles of organization and procedure—marked the debut of a series of enduring changes. These changes would, in the long run, help the Muslim judicial system to survive and find a place in the colonial order, and would contribute to the emergence of new political spokesmen. In the short run, however, intervention helped to precipitate the crisis which led to the undoing of the concession.

Thus I treat the period of the decree's application (formally, until 31 December 1859) from two angles: first, a study of the goals of the decree, the means it endorsed for reaching those goals, and the practical problems of application; and, second, an analysis of the most immediate and visible results of the decree, the series of majlis crises which swept the Oranais in 1858. To lay the foundations of this analysis, it is first necessary to present a few points concerning the functioning of Muslim justice prior to 1854, and the political context of the decree.

5.1 Judicial Organization Before 1854

One can find two contrasting images of Algerian judicial organization as it existed prior to major intervention by the French. One stresses the primacy of political authority and the resultant arbitrariness of justice. The other saw a virtual free market in justice, a system without formal rules of competence or jurisdiction.

The first view is often found in the writings of European observers. An Englishman, J. R. Morell, claimed that the qadis of Ottoman days were venal and unjust, though he did find some virtue in the

use of the bastinado to "keep down litigious spirits."[1] A Neapolitan traveler, Filippo Paranti, who visited Algiers shortly before the conquest, reported that qadis usually purchased their office, and that true justice was thus exceedingly rare. The qadis, he said, judged "*senza appelo e senza pietà.*" Their fault was not only an unrestrained love of money, but a marked tendency to favor their kinsmen in judicial controversies. As Paranti's friend, the qadi of Algiers put it, "for the correct administration of justice, all the qadis would have to be eunuchs."[2]

These views derived from observation of justice in urban centers. Data on rural justice, however, often leans toward the second image, that of a free market, or at least of a system characterized by great flexibility. In the view of General Yusuf, a Muslim who had risen in the ranks of the French army, this free market had distinct advantages. In having no official jurisdiction, or a monopoly of judicial authority, the tulba (in this usage, free lance notaries and arbiters) who dispensed judicial services in rural areas were obliged to maintain a reputation for morality and even-handedness in order to attract and maintain a clientele. The pressures of the market, he felt, were more effective regulators than French surveillance. It was best to limit the French role to control of the higher level of the judicial process by maintaining Bureau Arabe qadis in each administrative center.[3]

But the predominant view within the military, the one which was to prevail in the formation of the decree, was that the tulba who administered justice in this unregulated system were "as lacking in knowledge as they were in morality," and that the appointment of official qadis at the tribal level would constitute a significant step in the direction of progress.[4]

A variety of arguments were associated with this point of view: that France, to fully assert her control, and fulfill her mission civilisatrice, needed to dominate every aspect of Muslim life; that independent tulba were responsible for the survival of retrograde prac-

[1] John Reynell Morell, *Algeria, the Topography and History, Political, Social and Natural of French North Africa*, London, 1854, pp. 381-386. Morell also notes with considerable interest that penalties for feigned bankruptcies varied from one community to another. Christians were strangled, Moors were impaled, and Jews were burned.

[2] Filippo Paranti, *Aventure e oservazioni di Filipo Paranti sopre le coste di Barbaria*, Naples, 1830, vol. 3, pp. 73-76.

[3] Div./Alg., Report on Muslim Justice—1859, in 17 H 2. Other local commandants made pleas for the retention of the Bureau Arabe qadis, but only General Yusuf seems to have maintained that they should be the only official qadis. On the military career of Yusuf, see C. Trumelet, *Général Youcef*, 2 volumes, Paris, 1890.

[4] Div./Oran, Report on Muslim Justice—1859, in 17 H 2.

tices such as child marriage; and that these tulba were often in fact controlled by a local native chief, and rendered justice largely to suit his interests.[5]

These arguments were compelling ones. But in focusing on points like these, the French failed to pay attention to another fundamental question, that of the organizational principles which underlay the Muslim judicial system. General Yusuf seems to have understood that the distinction between official qadis and unofficial tulba reflected a sort of division of judicial labor well adapted to local needs. The tulba exercised primarily *notarial* functions, which required only literacy and a basic knowledge of the law. The tulba were numerous, widely disseminated, and thus easily available to those who required their services. The qadi was primarily a judge, and handled the most important cases, where substantial interests were involved. Such cases were often likely to be of interest to the government, and to require more thorough legal training than did simple notarial activities. Thus it made sense to handle them on a centralized basis.

It is clear from the registers of the Bureau Arabe qadis of Mascara and Orléansville that the institution of Bureau Arabe qadi was in practice often synonymous with that of majlis. The primary role of the qadi was to preside over a majlis of fuqaha drawn from the surrounding region. Although this majlis might on occasion hear appeals and revise the judgments of tribal qadis its primary role was to judge important and complicated cases which were brought to it directly.[6]

The decree of 1854 maintained and in fact strengthened the majlis. However, it also laid the ground for potentially serious problems by projecting a French concept—the distinction between a court of appeal and a court of first instance—upon the majlis and the qadi. This projection, and the failure of the French seriously to study the operation and role of the majlis in the pre-1854 system, also resulted in other problems. The French simply overlooked the flexible nature which the majlis of certain regions possessed. A proper court of appeal, they reasoned, should be fixed in composition. And the notion that the majlis was a "court of appeal" created a rivalry between the French tribunals and the majlis, and led the French judiciary to view the majlis with particular hostility, feeling that the dignified and ex-

[5] The domination of the native chiefs over Muslim justice is most visible in Ferdjioua, controlled by Bu 'Akkaz, and in the Medjana, controlled by the Muqranis.

[6] This was certainly true in Mascara and Orléansville, and also appears to have been the case for the majlis of Algiers and Constantine.

alted role of appelate jurisdiction could be entrusted only to French judges.[7]

In sum, one can discern a few simple principles guiding the organization of the pre-1854 Muslim judicial system, most importantly the incipient division between judicial and notarial functions. But these principles were nowhere clearly spelled out in a body of law or regulations. Many native affairs officers of the day understood this basic principle, but, lacking an officially certified definition, they fell back on French concepts when it came time to frame a decree. And once this reinterpretation of Muslim judicial organization had been sanctified in the form of a decree, it took on the great authority which only the officially printed word could have in the regulation-conscious ranks of the French military.

5.2 The Political Context

The political context of the decree is marked by two major events: the submission of the major resistance leaders, 'Abd al-Qadir and Hajj Ahmad Bey (in 1847 and 1848), and the outbreak of the Crimean War in 1854. The former signaled the consolidation of French control over the Algerian Tell; the latter required a sudden departure of seasoned troops, but it also provided the French with an unparalleled opportunity to pose as champions of Islam.

Having consolidated control over northern Algeria (except for the Grande Kabylie, which did not definitively submit to French rule until 1857), the French felt the need to push beyond the makeshift arrangements of the 1840s, and impress upon the Algerians not only France's domination but her devotion to their welfare. However, notions as to just what constituted that welfare varied between sectors of the colonial regime, and even within the military.

The Minister of War, Marshal Vaillant, was an exponent of what can be termed indirect rule, calling for the adaptation of Islamic institutions to French purposes, rather than their wholesale replacement by French institutions. But his views were opposed by leading members of the French judicial establishment, who were convinced of the congenital backwardness of Islam, and who insisted that French courts should always have the final say in any questions of law.

Within the military, Governor-General Randon was at best cool to

[7] On the hostility of the Cour Impériale to the majlis, see above, Chapter 3. For a searing attack by a high French judicial official on Muslim justice in general at this time, see Proc.-Gen./Alg. to MAC, 28 July 1859, in 17 H 2.

Vaillant's views, though, as an obedient officer, he would carry out orders. Randon was primarily a soldier, not a political strategist or a native affairs specialist. The latter mold was typified instead by General Daumas, Vaillant's main advisor on Algerian affairs, and probably the man with the largest role in drawing up the final version of the decree.

Faced with opposition on the question of establishing the sovereign majlis, a policy which embodied the indirect-rule approach, Vaillant invoked a supreme political consideration, France's role in the "Eastern question." In a letter to Randon, he wrote: "It will not escape anyone that from the point of view of the reforms solicited in favor of the Christians of the Orient, an act such as this can be advantageously used by the Sultan's government to oppose the party who are still hostile to the benevolent intentions of His Majesty."[8] In other words, he was intimating to his subordinate that the creation of the sovereign majlis was a sort of quid pro quo for Ottoman reforms aimed at improving the situation of the Christians in the Empire. Thus he invoked both a consideration of international diplomacy and a Christian's solidarity toward his brethren in bondage.

There are grounds for suspecting that Vaillant's argument was spurious. Diplomatic correspondence from Constantinople and Damascus at the time makes no mention of Algerian affairs, except in relation to the Amir 'Abd al-Qadir, by then in exile in Syria.[9] The argument was probably designed to stifle objections to the decree, as well as complaints that the Ministry in Paris had rejected a draft decree prepared by a commission in Algiers and had prepared another without consulting anyone in Algiers.

The clearest expression of Vaillant's real thinking is given in the following passage:

[8] Min. Guerre to GGA, no date (probably August 1854), in F80 1624. See also Min. Guerre to GGA, 16 June 1856, in which Vaillant angrily asserts that he finds intolerable the criticism of his policy by the Comité Consultatif, in F80 1621. The other remark on the Eastern question in relation to this decree is in Div./Oran to GGA, 12 December 1854, in F80 1624.

[9] Virtually all the correspondence relative to the Amir is from Damascus. I have not been able to locate any file or register of correspondence between the Ministries of War and Foreign Affairs, either at the Quai d'Orsay or at Vincennes. Thus I cannot confirm or refute the hypothesis of spuriousness. Even if one could confirm it, one could still argue that the Ottoman reforms were important in contributing to the conviction of men like Daumas that reform within an Islamic framework was indeed possible.

> I have taken as a point of departure this principle: that one must interfere as little as possible in disputes among the Muslims, and limit oneself to surveying their justice, to assure sound application of the law. We must let Muslim justice be carried on side by side with French justice, and independent from it, and appear only as protectors against the exactions which are the habit of the qadis. . . . In giving appeals to French tribunals, we expose ourselves to the recriminations of the loser, and it is our intent to stay out of such conflicts.[10]

There was another political dimension to the decree's formation, which Vaillant did not invoke, but the spirit of which was certainly in the decree. It had been explained by General Lamoricière a few years earlier: "In the organization we are giving to Muslim society, we have already given a place to those we call men of the sword, whom the Arabs call men of the powder. It is time that we do the same for those who influence the masses by words. . . . In instituting qadis, we have begun to march in that direction."[11] Lamoricière, like Daumas, was a veteran of the Oranais campaigns, and was thus acutely aware of the alienation from the French felt by members of the religious elite, who had played a major role in resisting the colonial invasion. This alienation could only be perpetuated by France's relying solely on her wartime allies, the makhzan elite of Oran, and by her conceding favors and privileges only to that group.

Viewed in this light, the decree can be seen as an attempt to redress an imbalance, to correct an excessive dependence on the military elites, the juwad or military nobility in the East, and the makhzan elite in the West, and to woo the religious leaders by granting them increased power and prestige and by assuring them of French respect for Islamic institutions. The offer of a judicial post could lure a marabout into alliance with the French, or at least compromise him in the public eye. Further, by granting the qadis immunity from the disciplinary powers of the native chiefs, the French could undermine the often dictatorial powers of the chiefs.[12]

[10] Cited in Victor Foucher, in Rapport au Comité Consultatif de l'Algérie sur le projet de décret sur l'organisation de la justice musulmane en Algérie, 1854, in 2 X 103.

[11] GGA par interim (Lamoricière) to Min. Guerre, 15 January 1848, in 22 S 1.

[12] Article 4 of the Titre préliminaire states that the chiefs cannot fine or punish a qadi, and that they must refer any complaint to the French. Remarks on the independence of the qadis are common after 1856, and especially after 1860, when all Muslim judicial personnel came under the authority of the French judiciary. The latter

The colons and the French judiciary refused to see such a policy as an astute strategy of divide-and-rule. They were little concerned with the short-run problems of consolidating control; rather, they were preoccupied with assuring that French sovereignty over Algeria be integral, and that no vestiges of an Arabo-Islamic nationality be left to undermine that sovereignty. In 1854 these critics could be held in abeyance, but they would jump at the first occasion to attack what they considered a heretical system. They were no more fond of Vaillant's "tanzimat" than the Ottoman conservatives had been of 'Abd al-Majid's.

5.3 Major Provisions of the Decree

The 1854 decree was marked by two principal orientations: the granting of autonomy to the Muslims in civil affairs, and the effort to improve the Muslim judicial system through a rationalization of organization and procedures. Those aspects of the decree falling under the first rubric—the Conseil de Jurisprudence, discussed in Chapter 4, and the sovereign majlis, which I cover in the next section—proved highly vulnerable. But other aspects of the decree and its implementation, relating primarily to organization and procedure, proved enduring innovations.

The most important organizational innovations were those concerning the establishment of fixed judicial circumscriptions, the definition of the qadi's role and duties, and the selection of judicial personnel. It should be stressed that what one sees in these fields during this earliest period were not so much radical innovations in and of themselves as they were signposts pointing the way to a series of changes whose cumulative effect would be quite radical.

The Drawing of Circumscriptions and the Definition of the Qadi's Role

In drawing circumscriptions, the French felt that they could opt either to follow established tribal lines, appointing a qadi wherever there was a qaid, or else set up new divisions based only on practical considerations of distance, population, and the amount of revenue the affairs of a region could be expected to generate for the personnel of a mahkama. The former alternative carried the implication that mag-

could be more severe in punishment than the military, but, with a notable exception for the incidents involving the majlis of Tlemcen and Sidi Bel Abbès, discussed below, they were generally quite rigorous in demanding unimpeachable proof of misdoing.

istrates would be subordinate to the tribal chiefs, whereas the latter approach stressed the principle of separation of powers and thus announced a new direction in policy. The decree was formed in the spirit of the latter alternative, though it was not until 1867 that judicial circumscriptions became clearly separate from tribal organization.

Writing of directives that he had given to his subordinates for drawing up circumscriptions, Randon phrased the goal thus: "in tracing circumscriptions according to distance and population, one takes a step toward the disaggregation of the tribe, which is our goal."[13] In other words, this was to be part of a general reorganization of Muslim society, an effort to mold Algerian tribes into municipal and communal units in the French fashion, which would, it was assumed, spell an end to the independent and warlike ways of the tribes.

A more succinct and practical explanation of the motive for such reorganization was given by General Pelissier, then Commandant of Oran. Criticizing proposals from the local commandants of the province, who had simply followed tribal lines in drawing up circumscriptions, Pelissier asserted that their approach "would only provide a semblance or organization, and would perpetuate the chaos which exists today [along with] the graft and corruption which are the inevitable consequence." Acording to him, there were too many qadis; half of them were "desperately ignorant"; most of them "vegetated in poverty," and thus were an easy prey to corruption; the qadis were subordinate to the will of the native chiefs; justice was rendered in undignified circumstances in markets and domestic tents; and the qadis had no 'adils to assist them, and thus prepared documents that had no legal validity according to Islamic law. Pelissier estimated that there were some 200 qadis in the province, and recommended reducing the number to 41.[14] In fact, 72 circumscriptions were created in 1854, but by 1874 that number would be reduced to 41, and it would decline to 24 in 1881.

[13] GGA to Min. Guerre, 3 November 1854, in F80 1624. The goal would only really be practicable with the application of the Senatus Consulte of 1863, which led to the wholesale political and administrative reorganization of Muslim society. This reorganization coincided with the growth of colonial towns and the development of the transportation network.

[14] Div./Oran to GGA, 10 July 1853, in 1 JJ 10. In Ain Beida (Subdiv./Cst.), the Bureau Arabe chief found just the opposite problem. He wanted to create more qadiships, for the only existing qadi was an influential marabout of the Harakta, who evidently filled the role taken in more closely controlled areas by the Bureau Arabe qadi. The recommendation for more or fewer qadis depended on which level of jurisdiction one was talking about.

What Randon referred to as "disaggregation," a term fraught with suggestions of nefarious designs for the destruction of the social fabric, can thus be described better by a more pedestrian term, such as "centralization." Raising the standards of justice, at least from the French point of view, required better paid and better educated personnel, and more official looking and dignified quarters. All of these goals required a widening of circumscriptions, and eventually a concentration of judicial activities in the towns.

The 1854 decree was only the beginning of a trend. It could not have instituted centralization overnight, for there were simply few centers as yet. A number of new military and administrative centers had been built—such as Orléansville, Sidi Bel Abbès, Batna, and Sétif. But the small colonial towns that would gradually displace local markets as centers of economic and legal life—such as Relizane, Perrégaux, Duperré, Jemappes, and Mondovi—did not really take firm root until the 1860s. With the development of these small towns, the tribal qadi, who had once judged in the hurlyburly of the market, sometimes carrying on his business side by side with two or three other qadis,[15] could be transformed into an Islamized version of the French magistrate.

Though the 1854 decree sanctioned a still largely decentralized system, creating over 350 circumscriptions, one can argue that it treated the office of qadi *as if substantial centralization had already taken place.* It did this by treating the tribal qadi not only as a notary, but also as a judge, and indeed primarily as a judge. But, the tribal qadi was primarily a notary. He could act as a judge, but most serious cases were taken directly to a more powerful and prestigious court, that of the majlis or the Bureau Arabe qadi, located in the chef-lieu of the cercle or subdivision. In remote areas, such cases might have been taken to an especially prestigious marabout.

Once it was assumed that all qadis had the same competence, and that their competence included being a judge of first instance in all Muslim civil cases, no matter how important or trivial, it then became logical to proclaim that the majlis was a court of appeal. And once the majlis was considered as an appeals court, it became logical to base it on the subdivision, a unit a good deal larger in most cases than the cercle, which had been the base of the Bureau Arabe qadi prior to the application of the 1854 decree.[16] Vaillant explained that

[15] For instance, the qadis of Zoua, Metchatchil, and 'Abd al-Wahad all held sessions at the market of Mascara. Subdiv./Msc. to Div./Oran, 9 August 1861, in 30 JJ 130.

[16] In the cases of Oran and Sidi Bel Abbès, the cercle coincided with the subdivision.

the larger units were designed with the goal of "discouraging litigious tendencies" by making appeal more difficult.[17] (Following Mr. Morell's imagery, we might see the subdivisional majlis as a civilized version of the bastinado.)

In practice, this revision of the workings of the Muslim judicial system was of minor impact in the 1850s, for the Bureau Arabe qadis of the chefs-lieux of the cercles were in most cases maintained, and probably carried on much as before, though they were not officially recognized as having any special functions. But after the new decree of December 1859, which eliminated the majlis and put all the qadis on an equal footing, directing appeals to French tribunals, the results of the revision would be keenly felt.

Why did the misunderstanding arise? First, Islamic law pays little attention to questions of judicial organization, thus offering no clear written guidelines by which the French could understand the Algerian system. This facilitated the projection of French concepts. Second, there was in fact a good deal of confusion, especially in rural areas, between judicial and notarial functions. It was up to individuals to decide whether to go to one of the local tulba, to a tribal qadi (who had, for one reason or another, managed to acquire an official seal), to the Bureau Arabe qadi, or to the majlis.

Finally, the French had good reason for seeking to eliminate the uncontrollable, widely dispersed free-lance judges and notaries and concentrating their functions in the hands of local qadis.[18] In formally appointing, surveying, and disciplining these local qadis, the French could hope to gain closer control over even the day-to-day aspects of native social and economic life. In itself this was perhaps a viable goal. The mistake lay in assuming that all these posts could be filled by men with sufficient legal knowledge and political influence to judge a really important case.

With the amputation of the top level and its replacement by virtually inaccessible French tribunals, the French would find that they had entrusted major judicial functions to men qualified to be notaries, or perhaps juges de paix, judges of petty disputes.[19] In the radical

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Majlis based on cercles can be found in Bougie, Dellys, and Djidjelli, probably because these were Kabyle areas differing in language and legal practice from neighboring Arab areas.

[17] Cited in Victor Foucher, Rapport au Comité Consultatif. See note 10.

[18] For an example of complaints against uncontrolled tribal tulba, see Cercle/Souk A., Report—June 1855, in 24 KK 50.

[19] The French judicial system distinguishes between the justice de paix and the tribunal. The former handled only minor cases, and ideally the juge de paix was to

centralization from 1867 onward, the French would be able to recruit a corps of highly qualified qadis of magistrate caliber, but at the same time they would make official notarial services more difficult of access for a large part of the population.

Recruitment of Judicial Personnel

The recruitment of Muslim judicial personnel posed a special set of problems to the French. Few colonial officials were qualified to evaluate a man's competence in Islamic law. Officers in the field had little occasion for direct contact with the qadi, and thus often had no way of directly judging a qadi.[20]

The decree of 1854 offered no guidelines as to how to go about recruitment. Rather, it was exclusively concerned with determining which of the branches of the French administration should have control over discipline and appointments. Most importantly, it excluded the judiciary from such control, granting it instead to the prefects in civil territory and to the provincial commandants in military territory.[21]

In practice, recruitment decisions were made at the local level, in most cases by the commandants of the subdivisions or the cercles. Since there were no specific requirements, and since only by fortuitous circumstance could a superior authority have reason to reject a candidate, nominations made at the lower level were usually ratified. A few vague comments as to a man's intelligence, education, and lack of fanaticism sufficed to secure approval from above.[22]

Once in office, judicial officials were subject to a periodic evaluation, and these too were were quite rudimentary, such as "*assez bien*,"

conciliate rather than adjudicate. For this reason, legal credentials were not required of the juge de paix until the late nineteenth century, and the posts were usually filled by patronage appointments. The magistrat had to have legal training, and was part of the national judicial hierarchy. In Algeria, the concept of the juge de paix as an amiable conciliator drawn from the local community was persistently rejected. The office existed, but was filled by young metropolitan law school graduates. Metropolitan authorities rejected the concept out of fear that local politics, which seemed to be notoriously vicious in Algeria, would too easily sway a non-professional judge.

[20] The lack of contact between Bureau Arabe officers and qadis is evident in the Arabic correspondence of the officers found in the military archives. See for instance 32 KK 1 for Cercle/Cst.

[21] There was sharp debate in the early 1850s over whether the prefects or the judiciary should control Muslim justice in civil territory. The two sides accused each other respectively of political insensitivity and ignorance of the law.

[22] See, for instance, 1 J 21 for nominations from Mascara. Over the years, information on judicial candidates became more detailed.

"*fait bien son métier,*" "*corrompu, vieux, fanatique, pasionné.*"[23] In this period, distinct personal characteristics generally came to light only in an investigation of charges of corruption or misconduct. The superficiality of personnel selection is further underscored by the high turnover rate among 'adils, who seem to have been changed often without explanation, and a large number of whom disappeared without trace in the reorganization of 1860.[24]

Earlier, it had been the practice simply to defer to native chiefs on questions of judicial personnel, and in some areas this remained the case through the 1850s. But as the French sought to diminish the power of the native chiefs, they looked to new sources of authority, particularly to the Bureau Arabe qadi or to the majlis, who did not simply pass recommendations on, but would actually examine candidates for judicial positions, and issue certificates to those deemed qualified. The majlis in particular was felt to have the advantages of legitimizing choices through the prestige and respectability of its members.[25] However, the majlis could not convincingly guarantee a nominee's loyalty to the colonial regime. Only through control of the educational process could this requirement be effectively met. Thus it was that the official médersas played an increasingly important role in judicial recruitment.

The Médersas

The idea of establishing the médersas can be traced to a survey of Muslim education carried out in 1847. The principles which were to guide these new schools were set forth in a report by General Bedeau on education in Constantine, which enters into great detail concerning educational establishments in that city prior to the conquest, and the decline of Muslim education since the conquest.[26]

[23] These comments were made on Muslim magistrates in Subdiv./Aum. in 1858, in 20 I 4.

[24] For the period 1856-1860, the only complete record of appointments is in a register, F80 2013. Personnel eliminated from the system were simply crossed out, with no mention of the reason. The *Bulletin Officiel* is not reliable for this period. Only after 1860 does it give a complete record of all appointments and changes.

[25] Examples of majlis approval: Sa'adi Ben Khadim Allah (Q 38—Cercle/Djidj.), Div./Cst. to GGA, 16 July 1858, in F80 1622; and Subdiv./Mil. to GGA, 8 and 21 January 1859, in 60 II 22. The majlis of Miliana examined seventeen candidates and found only three to be qualified. On Bureau Arabe qadi approval, Subdiv./Set. to Div./Cst., 25 March 1855, in 40 KK 9.

[26] Div./Cst. to GGA, 12 February 1847, in 22 S 1. Similar reports from Oran and Algiers are less favorable toward Muslim education. For a brief treatment of the mé-

Both the writer of the report (Bedeau) and his subject (Constantine) were significant. Constantine, at this time, was thought by the French to be the Algerian city most amenable to a friendly encounter of Muslim and European values. Bedeau was a major proponent of what can be called parallel development, the theory that it was best to keep Islamic institutions separate from French ones, and guide them through progressive stages of development to the point where they would be perfectly compatible with French institutions and culture.[27]

The goal of the médersas—the preparation of enlightened qadis—had been articulated by Bedeau in another report just three months earlier. "Let us try," he proclaimed, "to create qadis who at the same time know the religious books well, and know the elements of our principles, of our social, industrial, and civilizing sciences."[28] The médersas were to create men well versed in both French and Islamic culture, who could serve as intermediaries between the French and Algerian Muslim society. This goal may appear to have been hopelessly ambitious. But, to be fair, one must understand Bedeau's statement as the expression of a long-term goal, and evaluate it only in light of the development of the médersas and of the Muslim judicial system over the long term.

In the first decades after their founding, the médersas had considerable difficulty, especially in the three interrelated areas of funding, the geographical and social bases of recruitment, and the standard of education dispensed. All the médersas suffered initially from an inability to draw students from beyond their own immediate regions.[29] There was no selection process for students. Virtually all who bothered to appear at the door were admitted. As a report of 1858 stated the matter: "Being obliged to provoke and facilitate rather than dis-

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dersas prior to 1880, see Yvonne Turin, *Affrontements culturels*, pp. 246-250. In my view, the médersas became firmly established only after the late 1870s, when the French began to recruit top flight professors, such as al-Majjawi.

[27] Bedeau's views can be contrasted with those of Vaillant, whose various dispatches and reports seldom mention concepts of progress or development. Vaillant was mainly concerned with keeping things under control.

[28] Div./Cst. to GGA, 12 November 1846, in 17 H 1.

[29] On narrow base, see Report on the Constantine médersa, October-December 1859, in 24 S 1. Twenty-nine out of thirty-four students at the shcool were from the subdivision of Constantine; also Div./Cst. to GGA, 26 April 1860, in 1 KK 37; Subdiv./Mgnm., Report—October-December 1857, in 32 J 4; and Subdiv./Msc. to Div./Oran, 25 January 1859. Before 1860, no student from either Mascara or Mostaganem went to the médersa.

cuss admissions, one cannot be rigorous in choice—the task of teaching is thus very difficult for the professors."[30]

Yvonne Turin has argued that this narrowness in the recruitment base was due to the strength of the zawiyas and to the distrust of Muslims for the French-controlled médersas. But much of the blame must also go to material conditions. The budget, which gradually rose from 40,000 francs in 1850 to 58,000 by the middle of the decade, covered only the bare minimum of rent, maintenance, and the few professor's salaries. Students had to provide their own food and lodging, or else live on subsidies from the tribes, a method of financing which perpetuated the particularism against which the French so often inveighed.[31]

Library holdings were pathetically scanty; the core of the Constantine médersa's holdings consisted of thirty volumes of Sidi Khalil's *Mukhtasar* and fourteen of La Fontaine's fables translated into Arabic.[32] Students were not required to spend a set amount of time at the médersa, but could be given certificates of capacity whenever they were deemed ready. This certificate gave one preferential treatment in appointment to judicial positions, but there were far too few students from a far too narrow geographical base (very few were willing to accept appointment outside their home region) to fill more than a small percentage of the openings at this time.

By late 1858 there had arisen a strong reaction against the Islamophile tendencies of the early 1850s. Control of Algerian affairs was transferred from the Minister of War to the newly created post of Minister of Algeria and the Colonies, which was filled by a nephew of the Emperor. Prince Napoleon took up his new charge with great enthusiasm, and considerable naïveté. In December 1858 he inquired of Algerian administrators "if it were truly a prudent principle to give an official existence and to attribute budgetary support to schools destined to form apostles of a religion evidently hostile to our occupation, or to facilitate recruitment of a magistrature whose role must be progressively diminished [by the expansion of French justice]."[33]

However, the military reacted vigorously against this threat to the

[30] Bresnier Report on the médersas, 25 March 1858, in 24 S 1. See also the history of the médersas in *Mobacher*, 11 March 1882.

[31] On poor conditions, see Subdiv./Tlm., Annual Report—1853, in 1 H 10. Budget figures are in the Combes Report, 1894.

[32] Div./Cst. to GGA, 26 April 1860, in 1 KK 37.

[33] MAC circular, 27 December 1858, cited in Div./Oran to GGA, 16 December 1859, 1 JJ 12. The Commandant of Oran went to great lengths to defend the médersas in his letter.

future of the médersas, arguing that respect for Muslim justice was essential for keeping the peace in Algeria and that, given this necessity, it was far better to recruit judges from French-controlled médersas than from independent zawiyas. Such arguments easily carried the day, and the médersas were in fact strengthened, having their budget increased from 58,000 francs to 100,000, and, in the early 1860s, being granted a monopoly over recruitment to new openings in the judiciary.

That the attacks should have gone as far as they did had little to do with the médersas themselves. Rather, this must be seen as part of a general attack against Muslim justice, which was aimed primarily at the majlis. The médersas were tied to the institution of qadi, and the crisis of these two linked institutions would come only after the dissolution of the majlis.

5.4 The Majlis Crisis

The majlis crisis, which ushered in the end of the liberal policy initiated in 1854, involved four separate incidents of alleged corruption on the part of the majlis, all of them in the Oranais. An analysis of the crisis must begin with the following questions: Why were the majlis in particular vulnerable to such a crisis? Was the period 1858-1859 especially conducive for such a crisis, and if so, why? And why were the scandals concentrated in the Oranais?

The first two of these questions are relatively simple, but lead only to a partial understanding of the problem. Several elements of the weakness of the majlis have already been discussed. To summarize: they were opposed by the French judiciary; in some regions, they represented a departure from established judicial arrangements; they handled the most important cases, and were therefore liable to elicit the most serious complaints from litigants; such cases usually involved land—thus the colons could easily see the majlis as an obstacle to the development of a free market in land;[34] and, finally, the majlis were quite unusual in that they cut across both military and civil territory, and thus became the subject of rivalry between the commandants and the prefects.[35]

As to the historical setting: just as 1854 had been a high point of good feelings between Western Europe and the Muslim world, so the period from 1857 to 1860 marked a low point. This was the time

[34] On legal aspects of colon speculation, see Chapter 3.

[35] Qadis' jurisdictions fell exclusively in either civil or military territory.

of such events as the Sepoy Mutiny in India (1857), the Jidda massacre (1858), and the anti-Christian incidents in Syria (1860), all of which seemed to lend credence to the image of the Muslim as the bloodthirsty fanatic. The major theme running through the history of Mediterranean Islamic countries at this time was a generalized reaction against the liberal reforms of the early 1850s, and against the Christian millets who had benefited by the reforms (and, the Muslims felt, often abused their newly won privileges and rights).[36]

Among the colons of Algeria, the malaise created by these rather distant events was further compounded by a series of border incidents with Morocco, which prompted fears of an invasion or a brotherhood uprising directed from Morocco, backed by the "silky banknotes and shiny guineas" of the British. At the same time, the Italian campaign drew off experienced troops, creating a wave of insecurity, especially in the towns of the West, where European civilians demanded that natives be disarmed and that European militias be formed.[37]

The majlis were a symbol of dangerous liberalism to the colons, just as concessions to the millets had been to Muslims in the East, and thus a prime target of the backlash of the late 1850s. One might note a certain irony in these parallel reactions against liberalism: in the East it was equality before the law and the secularization of justice which appeared "liberal," while in Algeria the separation of jurisdictions and the maintenance of autonomous religious courts appeared as a sign of that tolerance which we usually associate with liberalism.

Indeed, one might with some reason question here my application of the term "liberal" to the 1854 decree. Was it not, like other enterprises in indirect rule, simply an instance of conservative paternalism? I think not, and here I am in the company of the eminent French historian Charles-Robert Ageron.[38]

The 1854 decree did not confirm a status quo or serve as a buttress to the blindly dogmatic and conservative elements within the Muslim community; rather, it introduced European principles of organization

[36] So widespread was anti-reform propaganda that when Ismail Bu Darba, an Algerian military interpreter, reported on his trip to the Ghat oasis in southern Tunisia, he claimed that a Sanusi agent there was preaching the Holy War and denouncing the new measures taken by 'Abd al-Majid. See Bu Darba, "Rélation d'une voyage à R'at," in F80 1677.

[37] Marbaud, *Coup d'oeil sur l'Algérie pendant la crise de 1859-1860*, Algiers, 1861, pp. 11-12. On disarmament, see Subdiv./Tlm. to Div./Oran, 16 November 1858, in 1 J 50.

[38] Ageron, *Les Algériens*, p. 203. He ventures that the 1854 decree could have served as the basis of a modernist Muslim government.

and, especially in the institution of the Conseil de Jurisprudence, encouraged the "progressive" elements within the Algerian religious leadership who were cognizant of Algeria's weakness and receptive to new ideas. The problem was that Algerian Muslim society, especially in the Oranais, could not easily adapt to the innovations, and that Algerian Muslim leaders were not adequately prepared to defend the concessions involved.

5.5 The Oranais Majlis Incidents

While the opposition of the French judiciary and the backlash of colon public opinion made it difficult for the majlis to survive, it was the rash of incidents of alleged corruption in the Oranais which made a difficult enterprise impossible. Not only were these incidents the focal point of a campaign to eliminate the majlis in 1858-1859, but they were also used to demonstrate the impossibility of allowing Muslims to assume such important judicial powers in all later discussions of the subject.[39] Never has any legal scholar or historian paused to ask why these scandals occurred, or to raise the obvious question of whether they were partially or entirely fabricated simply for the purpose of discrediting the majlis. Yet there exists extensive documentation on the question in the French archives.

The simplest explanatory hypothesis for the concentration of the scandals in the Oranais is that some or all of the factors mentioned in the previous section were more intensely felt in the Oranais than they were elsewhere. First, as should be clear from Chapter 2, the fixed composition of the majlis was an innovation in the Oranais. Previously, where the majlis had existed in the province—at least since the conquest—they operated on a more or less ad hoc basis; both the number of judges and the actual composition of the majlis were flexible. Also, on occasion, appeals were made from local cercle-based majlis to the provincial majlis in Oran.[40] Neither of these principles was admitted by the decree of 1854, which based the majlis on the subdivision, rather than the cercle, and which made subdivision majlis the courts of last resort.

Second, the Oranais was the province which saw the most exten-

[39] Most importantly, in the Gastambide Commission of 1865, the incidents were used as an argument against re-establishment of the majlis.

[40] On lack of "regularly constituted majlis" in the Province of Oran, see B.A.D./Oran, Report—January-June 1852, in F80 519. On appeals to Oran, B.A.D./Oran, Report—January-March 1855, in F80 519, and Subdiv./Msc. to Div./Oran, 21 June 1856, in 30 JJ 126.

sive European colonization, and thus there was greater pressure from colons wishing to acquire land, either by concession or sale. Oran offered the colons a large amount of sequestered land (thanks to prolonged resistance in the West), a smaller Muslim population competing for land than in the East, and land well suited to capital intensive agriculture based on the development of state-financed irrigation systems.

Third, the Oranais colons felt most intensely threatened from Morocco, and their insecurity bred a hostility to Islam in all its forms and a distrust of Muslim religious leaders, regardless of their professed political disposition.[41]

If these were the only factors involved, one could suspect with some reason that the incidents were simply manufactured by the colons and the French judiciary to suit their own political purposes. However, there was a good deal more to them. The key, at least in the two initial incidents in Oran and Mascara, lies in the internal political structure and history of Muslim society in the Oranais.

That history, particularly in the late beylik and resistance periods, was dominated by the conflict between "makhzan" and "marabouts." The makhzan were the Douair and Zmela tribes, who had served as the elite of the native military auxiliaries to the beys, especially after the transfer of their capital to Oran in 1792. In the 1830s they became allies of the French in their fight against 'Abd al-Qadir, and came to dominate the top posts in the hierarchy of native chiefs in the province.

While marabouts of other regions had been involved in rebellions against the beylik, those of the Mascara region stood out for their group-consciousness and their political ambitions, a trait best illustrated by their pretension to sharifian status.[42]

These two groups were to become deeply involved in the majlis crisis for two reasons: first, because each of them dominated a majlis, the makhzan elite that of Oran, the maraboutic elite that of Mascara. In other regions, one can find individuals or families who tended to dominate a majlis, but in no other cases does a distinct group appear to have been dominant. When an individual posed problems—as did, for instance, 'Abd al-Qadir al-Maziri in Médéa—he could be isolated and quietly replaced.[43]

But when there existed a group intent on furthering its interests

[41] See Marbaud, *Coup d'oeil*, a remarkable amalgam of political paranoia and material greed. He called for wholesale deportation of Muslim leaders.

[42] See above, Chapter 2.

[43] Div./Alg. to GGA, 23 April 1857, in 17 H 6.

through control of the majlis, there was a potentially serious problem. The French were naturally wary of any group exercising power on its own, for this threatened French dominance. The majlis were peculiarly well suited to the enterprise of such a troublesome group since they were usually based in civil territory and under dual military civilian control. Because of this they could not be directly manipulated by the military, and the members could on occasion play off these two rival wings of the colonial administration against each other to increase their autonomy.

The second reason for the involvement of the makhzan and maraboutic elites in the crisis was that there survived from the resistance period a deep conflict between these two groups, and since the end of open hostility judicial conflicts were a natural arena for the settling of old scores.

The Oran Incident: Disciplining the Makhzan Elite

The Oran incident stemmed from the first of the two factors: the makhzan elite (or at least certain members) had apparently, in the eyes of the military authorities, gone beyond the bounds of discretion and taken to abusing the power they had acquired through control of the majlis. This incident was, in the strictly legal sense, manufactured.

It was not, however, manufactured by the colons or by the French judiciary—as one would expect from a superficial analysis of the factors involved—but rather by the military authorities. Their goal in this maneuver was by no means to discredit all the majlis, but rather to bring a particular majlis under control. The discrediting was an unintentional consequence.

In April 1858 the Commandant of Oran announced in a dispatch to the Minister of War that he had received complaints against the majlis which were of "deplorable gravity."[44] The complaints had come from one 'Abdallah Walid Musallim, the son of a wealthy khuja of the Bey Hasan. He claimed that he had been cheated of a truly astonishing quantity of land—30,000 hectares—due to the machinations of the Agha Muhammad Bel Hadri, in collusion with the two makhzan elite members of the majlis, Muhammad Bel Qaid and Hamida Ben Qaid 'Umar. He accused Bel Qaid of preparing a false legal

[44] Div./Oran to Min. Guerre, 7 April 1858 in 1 H 15, and Div./Oran to GGA, 8 April 1858, in F80 1622. These two documents lay out the details of the military's case.

document, and both of the men of having illegally annulled an act of inheritance division.

It is difficult to believe that officers with long experience in Algerian affairs would have accepted at face value a complaint from the likes of Walid Musallim; he was notorious for his enormous debts and his habitual insolvency. He also happened to be in jail. It stands to reason that a man of his position and character would spin any manner of fanciful tale, and that he would feel few compunctions in lodging false accusations against those who had profited—in a somewhat dubious but legal manner—from his plight.

In an earlier round of insolvency, he had borrowed 6,800 francs from Ben Qaid 'Umar. Unable to make good on this debt, he had turned to Bel Hadri, his sister's husband, who gave him 15,000 francs and took as security a sizeable chunk of land. This transaction was done under the device of *bi' thani*, which meant that 'Abdallah had the right to repurchase the land. He was, he claimed, tricked into signing a second document, amidst the smoke and confusion of a Morrish café, which made the sale final and irrevocable (*bi' batt*).

In yet another development, 'Abdallah claimed that he had made an agreement with Bel Hadri transferring all his wealth to his son, thus removing it from the grasp of creditors. In return, Bel Hadri would take him on as khuja in his commandement post at Zemmoura (Cercle of Mostaganem) at 100 francs a month.

However, the majlis relieved him of all his remaining property by declaring that his father's inheritance had never been divided. Thus what he still had after his alleged duping was handed over to his father's surviving wife ('Abdallah's mother was deceased) and to his sister, as their share of what the inheritance had been in 1833. All of his own share he had already squandered. The lucky women, it turns out, were the wives of Bel Qaid and Bel Hadri.

The three accusees, and especially Bel Qaid and Bel Hadri, may strike one as unscrupulous. But not a jot of what they did was in any strict sense illegal. In fact, the original report on the incident which led to the dismissal of the two majlis members (but only a reprimand for Bel Hadri, who after all was an agha) contained a number of material errors: the quantity of land involved was not 30,000 hectares, but somewhat less than 3,000. And the majlis had not annulled a valid inheritance division, but rather one that had been falsified by 'Abdallah, who altered it to read that the land *had* been divided in 1833 (he used the same standard trick as had been used by Ben 'Aashit in the case discussed in Chapter 2), a sin for which the Cour d'Assises of Oran sentenced him to four years incarceration on 13 December

1859. As for the alleged duping incident, 'Abdallah could offer no proof for his allegation, only the lame excuse that the café was rather crowded and smokey.[45]

Why, then, did the case lead to such serious problems? To begin with, one must understand that landed inheritance was seldom divided, and that though women could in theory inherit land, they seldom did. However, when they did, it was usually at the behest of their husbands. Claiming land through one's wife, or another woman relative was a delicate affair, and appears, as I have explained in relation to the Mascara register, to have been governed by a certain set of tacit rules designed to help to avoid conflict between affinal kin. In making direct claims on their wives' shares, Bel Qaid and Bel Hadri may have saved the family patrimony from European and Jewish creditors, but they also violated a widely accepted principle, and this may help to explain why 'Abdallah was so enraged at them.

Second, there was the matter of the personalities of the two majlis members involved, and their conflicts with the local military authorities. Bel Qaid was a man of exceptionally good connections. He had been a khuja of General Mustafa, chief of the Douair, who had led them in the fight against 'Abd al-Qadir. And he had been qadi of Oran since 1840. Yet he also had ties with 'Abd al-Qadir, for in 1854 he was invited to visit the Amir in his temporary exile at Brousse, apparently as an award for the "bounty" he had shown to members of the Amir's family. Though there is no record of his actually having gone on this trip, he may well have met the Amir on his visit to the Exposition Universelle in Paris in late 1855.[46]

At the Exposition, he managed to win a first prize for a display of agricultural products, which may seem unusual for a magistrate. But Bel Qaid was also a farmer, and, according to a complaint of the Commandant, "he too often let himself be distracted from his duties as qadi by concern for a large agricultural enterprise on the outskirts of the city."[47] To augment his agricultural holdings, he managed to contract at least two strategic marriages, one with a widow of 'Abdallah's father, the other with a woman from a chiefly family of the

[45] The case is untangled in a report by the Conseiller d'État, Secrétaire Générale, Deuxième Bureau, Ministère de l'Algérie et des Colonies, 2 February 1860, in 17 H 4.

[46] On his background, see Div./Oran to MAC, 31 July 1858, in F80 1622. On "bounty," see Div./Oran to GGA, 12 June 1854, in 1 JJ 10. On 'Abd al-Qadir's trip to France, see 1 E 237, especially Div./Marseille to Min. Guerre, 2 and 3 September 1855.

[47] Div./Oran to MAC, 31 July 1858, in F80 1622.

Atba Djellaba (see Chapter 2), and the pursuit of these marriages led him into serious legal conflicts.[48]

The other majlis member in question, Hamida Ben Qaid 'Umar, was a grandson of the last bey, and from the age of 22, in 1845, he had served as mufti of Oran. Besides this, he was on the municipal council, an assessor on the French Tribunal, and, in his own words, "on all the administrative commissions in which a native is called to take part."[49] By the time he became president of the majlis in 1856, he had acquired a sound command of the French language.

Of the three principal accusees, only Ben Qaid 'Umar had not directly profited from the spoliation of 'Abdallah. While Bel Qaid had sought to save himself in conventional fashion, appealing to a protector, General Daumas, in the Ministry of War, Ben Qaid 'Umar felt so strongly that he had been wronged that he published a pamphlet on the case in French and went all the way to Paris to present his case to Prince Napoleon, Minister of Algeria and the Colonies. He systematically refuted allegations made against the majlis, and he suggested other motives for the military's hostility to him.

Ben Qaid 'Umar had been involved in a dispute with the Bureau Arabe (military) over a piece of land, and had won the case. And he had counseled some tribesmen to appeal for transfer from military to civil control. His analysis is substantiated by a former prefect of Oran, who wrote in September 1858 that hostility between Ben Qaid 'Umar and the military was "notorious in my time (as prefect) and has been perpetuated since then in the full view of the population of Oran, who continue to surround Hamida with their esteem. . . . For everybody, he remains a functionary who is a victim of his devotion to the progress of his fellow Muslims."[50]

Ben Qaid 'Umar can be best understood by being placed alongside Hasan Ben Brihmat of Algiers and al-Makki Ben Badis of Constantine.[51] All three men came from wealthy and prominent urban families; they were only teenagers when the French arrived; and they each rose rapidly in the judicial system, thanks, very likely, to their knowledge of French. Ben Brihmat and Ben Badis both went on to illustrious careers and positions of political prominence. Ben Qaid

[48] On the Atba affair, see Chapter 2.

[49] Hamida Ben Qaid 'Umar, *Mémoire à son Altesse Impériale le Prince Napoléon chargé du Ministère de l'Algérie et des Colonies*, Oran, 1858, in 17 H 4. This document, along with the report cited in note 45, makes the case for the majlis.

[50] Former Prefect of Oran (name illegible) to MAC, 7 September 1858, in 17 H 4.

[51] On Ben Brihmat, see Chapter 4; on Ben Badis, Chapter 6.

'Umar could probably have done the same had his early rise to prominence not provoked the ire of the military authorities.

The Mascara Incident: an Old Feud Upsets a New Institution

The most complex of the incidents, and from the point of view of internal Algerian politics by far the most serious, was that of Mascara. The essential background of this incident can be found in Chapter 2, where I have analyzed the operation of the majlis prior to the application of the 1854 decree. Two essential points need to be briefly recalled: (1) that the earlier majlis was flexible in composition, and (2) that since the actual judgment was pronounced by the Bureau Arabe qadi, the majlis was fairly easily controlled by the French military authorities.

But in 1856 four regular members, each with equal weight in decision making, were named to the majlis. The president, Tahar Ben al-Mahfudhi, had been katib on the earlier majlis, and can be considered as allied to the makhzan elite. The three other members were part of the maraboutic elite of Mascara, and two were relatives (at least putatively) of the Amir 'Abd al-Qadir—Tayib and Muhammad al-Saghir Ben Mukhtar. The third was Muhammad Ben Mukhtar al-Tamimi, he who had been so particular in the attribution of the honorific title "al-sayyid." Muhammad al-Saghir Ben Mukhtar resigned in January 1857 (probably because the placement of two brothers on the same majlis had raised eyebrows in Algiers) and was replaced by the old Bureau Arabe qadi, Tahar Ben 'Amr, thus splitting the majlis evenly between makhzan allies and Mascara ashraf.[52]

The case at the center of the incident pitted a party from the Awlad Sidi Daho against one from the Awlad Sa'id. The Senatus Consulte report noted that the latter were a very mixed group, including both Arabs and Berbers, and "servants of marabouts living side by side with makhzan horsemen." Further, it noted that many pieces of land within the territory of the Awlad Sa'id were owned by people from Mascara or from neighboring tribes.[53]

The Awlad Sidi Daho were one of the most important maraboutic tribes of the region. Under the beylik, they had been among those most vociferous in advancing claims to sharifian status, claims scorned by the beys, and by the leading makhzan scholar of the day, Muham-

[52] The change is noted in the *Bulletin Officiel*, but there is no record of the reasons in the archives.

[53] Senatus Consulte: Ouled Said (1867), in M 67, Dossier 211.

mad Abu Ras al-Nasiri. In the resistance period, the Awlad Sidi Daho had been strong partisans of the Amir.[54]

Because they had followed 'Abd al-Qadir virtually to the end, the Awlad Sidi Daho lost a considerable amount of land to the sequester. And, shortly before the majlis crisis, a fraction of the tribe, the Awlad al-Hajj al-Makki, faced the prospect of losing virtually all the rest of their agricultural land to a French speculator seeking a concession along the Wad Sidi Daho. Their position was so acute that the subdivision commandant, General Durrieu, went to great lengths to scale down the concession.[55]

Probably the efforts he made to defend the interests of the Awlad Sidi Daho were related to an incident which had occurred some nine months earlier. In June 1856 some two hundred families from the Awlad Sidi Daho and from the Ahl Eghris had requested permission to emigrate to a land under Muslim rule; those involved had been among the daira, the entourage of the Amir, and thus had lost a good deal of property to the sequester. At the time they requested to emigrate, they feared that they were to lose yet more land to colonization. The actual demand, however, may well have been precipitated by a visit from an envoy of the Amir bringing instructions from Damascus. They were, as was often the case, denied permission to emigrate, but evidently they were successful in making their point.[56]

It is not clear from any of the reports what was at stake in the Awlad Sidi Daho / Awlad Sa'id dispute. In fact, one has the impression that the actual legal stakes were of secondary importance, and that the case was a pretext for a settling of scores between the Awlad Sidi Daho, in alliance with certain members of the majlis, and one al-Hajj Muwaffiq, their opponent from the Awlad Sa'id. The latter, it appears, had sat on a majlis which overturned a ruling made by a previous majlis, and public rumor had it that the men whose decision he helped to overturn were now out for vengeance.[57]

Just what judgment had been overturned is not stated, but it is quite plausible that the judgment in question was that involving the Awlad Sidi Daho and Mulud Ben 'Aashit of the Atba Djellaba, a

[54] Senatus Consulte: Ouled Sidi Daho (1867), in M 67, Dossier 210. See also Chapter 2.

[55] General Durrieu in Commission Consultative/Msc., procès-verbal, 14 March 1857, in 30 JJ 370.

[56] Subdiv./Msc. to Div./Oran, 17 June 1856, in 30 JJ 126.

[57] The basic material on the case is in Subdiv./Msc. to Div./Oran, 1 April 1858, in 17 H 4.

conflict which clearly pitted makhzan against marabouts.[58] Indeed the same pattern appears here again: the makhzan party, fearing that the majlis of Mascara would rule against them, sought to appeal the case to the majlis of Oran.

In this instance, unlike the previous one, the Commandant of Mascara asked the provincial Commandant of Oran that the request for a change of lieu be honored. The latter refused this request, but authorized his subordinate to exclude those members of the Mascara majlis thought to be biased, and to replace them with more objective-minded judges.

Predictably, the two excluded were those representing the maraboutic elite (Tayib Ben Mukhtar and al-Tamimi) and those retained were the makhzan fuqaha (Ben al-Mahfudhi and Ben 'Amr). The first two replacements were two maraboutic fuqaha evidently thought to be pliable—Hamid al-Masharfi Walid Lekhal, qadi of the town of Mascara, and al-Hajj 'Abd al-Qadir al-Jilani, qadi of Qala'a. This substitution having been made, the majlis president asked for two supplementary judges, so al-Hajj Bashir Ben Khalil, qadi of Frenda, and al-Makki Bu 'Alim, qadi of the Sdama, were called in. This move was rather unprecedented: under the previous majlis, no fuqaha from the outlying region of Frenda sat on the majlis. Not only was the region quite distant from Mascara, but the tribes of that region had been ra'ya or subject tribes under the Ottomans, and thus were probably regarded with a certain disdain by the wealthier, more sophisticated Mascarans. Such tribes in their turn had shown their resentment against the elitism of the Mascara ashraf by taking up the cause of Bu Ma'za in a fierce but poorly organized uprising in 1844.

All these maneuvers almost failed to produce the desired result. Ben Khalil, whom the Bureau Arabe chief sought to portray as the only honest one of the lot, attempted to withdraw. The Bureau Arabe chief, however, managed to persuade him to stay on, and Ben Khalil was able to persuade the other judges to let realism prevail and find in favor of al-Hajj Muwaffiq.[59]

No sooner was the verdict in than the Awlad Sidi Daho came to the Bureau Arabe chief with a confession: they had bribed the majlis members. The officer demanded that they prove this, and they indicated that evidence could be found in the hands of local merchants, proving that they had borrowed money to bribe the majlis. An investigation not only proved that the Awlad Sidi Daho had borrowed

[58] See Chapter 2.

[59] His full name was probably al-Hajj Muwaffiq Ben Maddah. See Sijl 124 A.

money shortly before the case came before the majlis, but that al-Hajj Muwaffiq had done the same. Interrogated, the Awlad Sa'id allowed that they had paid off the majlis, but only *after* the judgment, as a token of their esteem.

The investigation continued at full tilt, conducted by an officer with a marvelous gift for making all the shreds of evidence seemingly fit into a convincing pattern, and with a popular novelist's talent for adding a dash of lurid detail and a hint of sexual misdoings. He took great delight in recounting the role of two Spanish women (one of whom was reported to have intimate relations with a man named Sadiq, who allegedly had a minor role in delivering one of the bribes), who claimed to have seen some of the tainted money on its extraordinarily circuitous route from corruptor to corruptee.

The most appropriate response to the zealous officer's convoluted account was offered by the qaid of Qala'a, who commented dryly: "And, besides, the Arabs aren't so stupid as to buy off a judge in front of witnesses."[60]

The story of the bribes is a rather transparent invention. Evidently the litigants, like other hard-pressed natives of the area, were borrowing heavily from local merchants, and naturally they were delighted to find a pretext for making someone else pay off the debts, and for avenging themselves on certain majlis members. The sums involved were unrealistically large: 3,500 francs from the Awlad Sidi Daho, and 875 from the Awlad Sa'id.[61] The former sum exceeds the values of all pieces of land under litigation before the Mascara majlis in the period 1853–1856, and even the latter seems quite high. The crux of the case was not bribery, but politics.

Why did the Bureau Arabe chief accept the story of the bribes? It is conceivable that he simply wanted to be rid of a majlis which had proved uncooperative through the whole affair. Also, he seems to have developed another scheme as he went along, and this involved al-Hajj Bashir Ben Khalil. Shortly after the majlis incident, and the sacking of Ben al-Mahfudhi and Ben 'Amr, Ben Khalil was nominated as president of the majlis. The dispatch recommending him ran: "This is a fine acquisition we are making, but it was not without considerable trouble that I succeeded in obtaining his consent. Used

[60] Subdiv./Msc. to Div./Oran, 15 July 1858, in 30 JJ 126.

[61] The bribes were reportedly distributed as follows: the president (Mahfudhi), 1,500 francs from the Awlad Sidi Daho, and 300 from the Awlad Sa'id; members, 2 x 750 and 1 x 500 from the Awlad Sidi Daho, and 1 x 100 from the Awlad Sa'id. For similar attempts to use loans as proof of bribery, see Subdiv./Tlm. to Div./Oran, 5 April 1864, in 1 J 55.

to living among a population who venerate him . . . , and having considerable material interests among the Sdama, he is reluctant to come here."[62] Thus al-Hajj Bashir was also offered the position of qadi of Mascara, and apparently it was the hurma, the great respect attached to the latter position, that won him over. Being qadi of Mascara "tickled his amour-propre" enough to get him to leave "a calm and honored existence in the mountains."

Why was Ben Khalil so important to the Bureau Arabe chief? The most logical assumption is that he, in his own turn, tickled the rather inflated sense of political genius of the officer. It was claimed that in all serious cases the Saharans "come from 80 to 100 leagues to consult him."[63] The nomination of Ben Khalil was probably conceived as that stroke of political genius which would open up the vast South without a single shot being fired.

In fact, Ben Khalil did not receive the qadi-ship, but had to settle for being mufti of the town. This he accepted gracefully, and then proceded to unveil his own political schemes. To wit, he wanted to unseat the Agha of Frenda, and either take his position for himself or install an ally in it. By 1861 he had made enough of a nuisance of himself that he had to be sent back to his old post as qadi of Frenda.[64] And there the Agha waited to pounce on him at the first opportunity.

Sidi Bel Abbès and Tlemcen: the French Judicial Authorities Intervene

While Ben Khalil pursued his schemes, the majlis crisis continued apace. In Sidi Bel Abbès an incident took place in March 1858, following a pattern similar to that of the Mascara affair. Large sums of money were said to have been paid in bribes by both sides, through the intermediary of a host of obscure dramatis personnae.[65]

However, in this case, a new twist was added. The majlis members were arrested, except for the principal culprit, who managed, at least temporarily, to stay free. This was Muhammad Salah Ben al-Ruaz, who had taken the lion's share of the alleged bribes, 500 francs out of 840. He had gone off to Miliana, in the company of a Moroccan money lender, to seek loans from his uncle to help to pay off his

[62] Subdiv./Msc. to Div./Oran, 15 July 1858, in 1 J 21.

[63] État de proposition, Hajj Bashir Ben Khalil for president of the Mascara majlis, August 1858, in 17 H 3.

[64] Subdiv./Msc. to Div./Oran, 27 March 1861, in 30 JJ 129.

[65] For details, see Cercle/S.B.A. to Subdiv./S.B.A., 4 March 1858, in 61 JJ 1, and Subdiv./S.B.A. to Div./Oran, 18 August 1858, in 60 JJ 12.

creditors, "who were tracking him from all sides." If this plan failed, he was going to go to Algiers to mortgage four houses which he owned there.[66]

Obviously, a man such as al-Ruaz was vulnerable to the offer of a bribe. However, the material available on the Sidi Bel Abbès crisis offers no convincing basis for an argument either for or against the culpability of the members. What is clear, however, is the reaction of the fuqaha of the region after they had seen their colleagues hauled before the Cour d'Assises of Oran and treated like common thieves. In January 1859 the local commandant reported that: "the qadis of the subdivision were very upset by the Oran trial. The new majlis members in particular have been reproached for having taken the positions of those unjustly condemned. It is possible that under public pressure they will resign."[67]

A similar pattern of arrest of the majlis members, followed by a reaction of the local fuqaha, occurred in Tlemcen. There, the crisis focused on a dispute over a cistern reported to be valued at only 100 francs. This evaluation, if true, casts grave doubt on the accusation that a single member of the majlis received 600 francs alone.[68]

While in Oran and Mascara, members of the majlis had been dismissed but not brought to trial (on express orders from Marshal Vaillant, who wished to avoid compounding the scandal by the public spectacle of a trial), and in Sidi Bel Abbès the French judicial authorities had seized upon the affair only after the military had already lodged the initial charges of corruption. In Tlemcen it was the judiciary who pursued the affair from beginning to end. The changing pattern parallels the change of hands of the direction of Algerian affairs from the Ministry of War to the brief-lived (1858-1860) Ministry of Algeria and the Colonies. While Marshal Vaillant had desperately sought means to limit the damage and salvage the majlis, which had been largely his own creation, Prince Napoleon took up the cause of the crusade against the majlis.[69]

[66] Ben al-Ruaz was apparently the only one to confess, saying, "It has always been the practice to buy Muslim judges, before as after the conquest." Cited in Proc. Gen./Alg. to MAC, 31 July 1858. It seems perfectly conceivable that he could have been pressured into confession by creditors. On his financial difficulties, see B.A.M./S.B.A., Report—October-December 1857, in F80 491.

[67] Subdiv./S.B.A. to Div./Oran, 25 January 1859, in 60 JJ 60.

[68] Subdiv./Tlm. to Div./Oran, 8 December 1858, in 1 J 55. It is interesting to note that a principal figure in both the demand for disarming the Muslims and in launching the investigation of the majlis was the juge de paix.

[69] On Vaillant's leniency, see Min. Guerre to GGA, 9 June 1858, in F80 1622. On the Prince's views, MAC to Div./Alg., 30 November 1858, in F80 1622.

In the case of the Tlemcen incident, he had personally ordered that the majlis members be brought to trial, and he took the decision without consulting officers in the field. The Commandant of Oran was informed of the matter by the Procureur Impérial only after the arrest of the Tlemcen majlis members.[70]

The reaction of the Tlemceni fuqaha to the heavy sentences meted out by the Cour d'Assises was initially one of great indignation, and several qadis and 'adils resigned from their posts. For a while the provincial commandant feared that the majlis crisis, combined with troubles on the Moroccan frontier, might generate severe political or even military problems. However, most of those judicial personnel who resigned were persuaded to return to their posts, and the emotion seemed to quickly subside.[71]

The End of the 1854 System

There was in fact little that the fuqaha could do to parry attacks on the majlis. They faced political forces, the nature of which they did not clearly understand, and they had little means of rallying public support or of winning a hearing before Prince Napoleon or the Emperor. Articulate, politically sophisticated fuqaha, such as Ben Qaid 'Umar, were very rare. But when he published a pamphlet, it was strictly to defend his own interests. It made no hint of taking up the defense of the institution. All the Oranais fuqaha seemed, in one way or another, preoccupied with their own narrow, personal interests. The Mascara marabouts were concerned with settling an old score with the makhzan elite; Ben al-Ruaz with getting creditors off his back, Bel Qaid with combined marital and real-estate speculation, Ben Khalil with turning the tables on a political rival.

The lack of political articulateness, and the retention of old patterns of political perception are clear in two Arabic documents related to the crisis. The first is a letter from Muhammad Bel Qaid to General Daumas in Paris. After telling Daumas that he had heard the accusations against him he wrote:

> I know that you, sir, understand the people of this land better than I or they (the local French authorities). I ask of you, and of the Minister, to bring this plea before the Governor General and the Tribunal of Algiers. . . . I am liable to two punishments, jail and

[70] Div./Oran to GGA, 18 February 1859, in 1 JJ 12.

[71] Subdiv./Tlm. to Div./Oran, 15 and 20 February, and 8 and 22 April 1859, in 1 J 55. The sentences ran from two years in prison to three months and 200 francs.

> dismissal. I do not want any punishment except sudden death without foreknowledge.[72]

He goes on to ask that Allah help Daumas to see the truth, to remind Daumas of the days he had served under him, and to kiss his hand and the hands of his children. In a word, it was a pathetic appeal to a protector.

The second is a letter of resignation from the majlis of Mascara protesting the continuing wave of complaints lodged by litigants. The majlis was then under investigation by the Procureur Impérial of Mostaganem. The judges wrote that they

> have been hindered by the complaints of the Arabs, and by their lying, because whomever we judge against complains [to all the authorities in succession until he finds an audience]. . . . We cannot put up with it because we are weak, and Allah asks you about us. Today, we request you to ask the Minister to release us from our work. For this, Allah will increase your well-being. . . . The civil authorities do not know Arab law, and we fear that harm will come to us, so we resign our charges. May Allah improve the condition of the French Empire. Peace.[73]

When this letter was written in June 1859, the fuqaha were aware that there was in the offing a major revision of the Muslim judicial system. But they could not articulate arguments against the impending changes, nor could they propose any remedy for the problems experienced by the majlis. The tone was one of bewilderment and hopelessness.

In the Oranais, Muslim justice had had to face two radical challenges in brief succession: measures designed to rationalize the judicial system from within, and an assault by the French judiciary, whose announced goal was the rapid demise of the entire Muslim judicial system. The combination overwhelmed the Oranais fuqaha.

There are indications that similar problems developed in the Province of Algiers. Shortly before the issuing of the new decree, the majlis of Miliana and Médéa were being subjected to inquiries over alleged corruption.[74]

However, those of the Constantinois never elicited any serious problems. Why this was would require further study. I can simply suggest that the answer would involve the following elements: state-

[72] Muhammad Bel Qaid to Daumas, 23 June 1858, in 17 H 6.

[73] Majlis of Mascara to Subdiv./Msc., 22 June 1859, in 1 J 21.

[74] Pref./Alg. to MAC, 4 August 1859, in 17 H 2.

directed rationalization was less of a novelty in the East; there were fewer colons there, and hence there was less land speculation; and there was not a major political fissure dividing segments of the Muslim elite. It was this milieu which would prove conducive, a few years later, to the emergence of the first articulate defense of the Muslim judicial system and of the autonomy of the fuqaha.

But, at the moment, the Algerian fuqaha and the judicial system were plunged into a crisis so severe that it would contribute to a serious outbreak of violence.

Chapter 6

FROM CRISIS TO REBELLION TO COMPROMISE: 1860-1866

The years from 1859 to 1867 were, more than any other period, crucial to the forging of the Algerian Muslim judicial system. They were a time of cosiderable turmoil, but also one in which the French and the Algerians came to understand each other better. The period opened with a moralistic tirade against Islam, of the sort which pervades Algerian colonial history. But it came to an end on a rare note, with French and Algerians sitting down to hammer out their differences.

6.1 The Decree of 31 December 1859: the Judiciary Gain the Upper Hand

The majlis scandals provoked a barrage of impassioned rhetoric from the assimilationists. The following, written by the First President of the Cour Impérial to Minister Prince Napoleon, typifies the tone:

> The majlis cannot be maintained without real danger for the conquered, and even for the conqueror. Too many elements of corruption exist in Muslim society for it to be possible to find a corps of magistrates offering the desired guarantees. Corruption is not a local phenomenon; one finds it in Constantinople, as in Asia Minor, as in India. It is inherent in Muslim society.[1]

As for the Prince, he needed little persuasion. Indeed he was among the most vigorous in denouncing the decadence of Islam. "Habits of venality," he wrote, "are so widespread among the natives that one should not neglect any means to penetrate their minds with the French administration's determination to show no pity to these scandalous abuses."[2]

[1] Premier Président, Cour Imp./Alg. to MAC, 29 July 1859, in 17 H 2.

[2] MAC to Div./Alg., 30 November 1858, in 17 H 4. The crusading zeal of the Prince is also shown in his authorization of judicial pursuits against the majlis of Tlemcen, and in the very complex "Ben Guigui affair" of Mostaganem, which pitted some Jews of Oran against the Agha Sidi Larribi. See Div./Oran to Com. Sup./Alg., 16 June 1859, in 1 JJ 12.

With a major change in judicial policy impending, top-ranking authorities within each of the branches of the colonial administration were called on for their suggestions. Within each branch, certain opinions tended to prevail, but there were also internal differences.

Within the military, the majority, in spite of the scandals, were staunch defenders of the "1854 system"; among this group was General Walsin-Esterhazy, the new (since February 1859) commandant of Oran. He was convinced that the sovereign majlis was a "traditional" institution and that if it were not it was certainly a smashingly good innovation. The only change he suggested was that there be a provincial majlis to review judgments of the subdivision majlis and thereby facilitate central control. He was strictly opposed to the superimposition of a French appeal jurisdiction. Such a measure, he said, was sure to become a focal point for opposition to French rule; and if the measure were taken, French magistrates, ignorant of Islamic law, were bound to ride roughshod over established legal practices, and generally make an insufferable mess.[3]

Another officer warned, with considerable insight, that suppression of the majlis would "open up a sore which everyone is aware of, but for which nobody has a cure; it would be to discredit without any compensating measure, the entire Muslim judicial system . . . to suspend the action of justice." He was willing to accept the institution of an appeal channel to the Cour Impérial, but only as a "moral brake."[4]

The prefects of Algiers and Constantine argued for a modified version of the majlis, which would incorporate a French official or judge—to assure that justice be done and a proper demeanor maintained. However, such notions of undisguised paternalism proved no more acceptable to Prince Napoleon than they had to Marshal Vaillant.[5] Further, the prefects would shortly be left without any role at all in the administration of Muslim justice.

[3] Div./Oran to MAC, 11 August 1859, in 17 H 2. This prediction is confirmed by the observations of two French authorities on Algerian Muslim justice of later periods, Ernest Mercier and Marcel Morand. The latter inveighed against the "gospelization" of Sidi Khalil, which was made *the* Maliki legal text in Algeria, largely because it was the only one readily available in translation. See Morand's *Introduction à l'étude du droit musulman*, Algiers, 1921

[4] Com. Sup./Alg. to MAC, 28 July 1859, in 17 H 2. The same sort of proposal is made by Div./Cst. to MAC, 2 August 1859, in 17 H 2. For officers hostile to the majlis, see Subdiv./S.B.A. to Div./Oran, 10 August 1859, in 60 JJ 13; and Subdiv./Mil. to Cercles/Cher. and T. el. Had, 7 November 1858, in 60 II 21.

[5] Pref./Cst. to MAC, 2 August 1859; and Pref./Alg. to MAC, 4 August 1859, in 17 H 2. On Vaillant's objections, see Chapter 3. For a differing view, see Pref./Oran to MAC, 4 August 1859, in 17 H 2, which calls for elimination of the majlis.

It was the judiciary who were best able to make their suggestions heard in Paris at this time. And within this branch, it was Procureur Général Pierrey who had a program to offer, rather than just a righteous tirade. His letter of 28 July 1859 spelled out most of the basic features of the decree to be issued five months later.[6]

According to his proposal, qadis were to be maintained; appeals were to go from qadis to a tribunal or to the Cour Impérial; appeal would be allowed to the superior jurisdiction only in cases involving objects above specified values—200 francs was the minimum for appeal to the Tribunal, 1,500 francs for appeal to the Cour Impérial; surveillance of the qadis was to be entirely in the hands of the Procureur Général, who would delegate authority to the Procureurs Impériaux in civil territory, and to the commandants in military territory.

Pierrey countered arguments that most French magistrates knew little of Islamic law by pointing out that they could always confer with their Muslim assessors. As for the majlis, he was rather vague, neither calling for their outright abolition nor defining any specific role for them. The decree allowed that a consultative majlis could be summoned by litigants. However, it allowed only three days following the qadi's judgment for a litigant to demand convocation of a majlis (but a full month to ponder the question of appeal to a tribunal). A majlis opinion was to be given no legal force. And as to how such a majlis should be formed, this was left to "tradition."

This decree, like the previous one, represented the triumph of the views of an individual, or at best a small coterie. It failed to incorporate the views of a significant sector of the colonial administration, to say nothing of those most directly affected—the Algerian Muslims.

6.2 Repercussions of the Decree

The impact of the 1859 decree fits, with modification, an analysis of the dynamics of colonialism presented in 1900 by A. Billard, a commune mixte administrator. In his view, the natives tended at first to look upon the colonial power's efforts at intervention in their social

[6] Proc. Gen./Alg. to MAC, 28 July 1859, in 17 H 2. The text of the decree is in *B.O.A.G.*, 1859, pp. 650 ff. For exaggerated moralism, see the Chasseloup-Laubat report, which prefaces the decree, and the introduction to the first volume of Pinson de Ménerville's *Dictionnaire* (1860), in which he intones, "The period of the conquest is over, and the constitution of a new Christian empire has begun. France finds herself in her new colony in the presence of a people still in infancy from the point of view of the civilization and traditions of modern society."

life as a sort of "platonic fantasy." But when the intervention proved serious, was backed up by force, and affected the day-to-day lives of the population, they reacted strongly:

> From this moment, the country is in a state of moral rebellion. Currents of fanaticism spread and are galvanized. Under their pressure, the official courts are emptied, and occult organisms multiply and little by little usurp the place of regular authorities. Their framework, like a vast net, englobes in mysterious affiliations all discontents, all alarm, all repugnances, all prejudices, all bitterness, all hatreds, and fuses them into an army of shadows where the old spirit of race, feeling threatened, and refusing to die, takes refuge in its last citadel.[7]

Billard's first point, regarding "platonic fantasies," is well taken in this case. Certain groups, foremost among them the notables of Algiers, greeted the decree in a manner which fell nothing short of unctuous. The muftis and qadis of the city wrote to the Emperor that the new decree "has procured for us a well-being comparable to the relief of soft sleep after a long illness without rest. The hearts of Muslims are filled with satisfaction, with lightness and thankfulness because of the protection you have deigned to accord to Muslim justice."[8] This was the language of men who saw no serious threat to their position or way of life in the newly imposed changes. Rather, they were convinced that they could muddle through, as always, by keeping up the proper subservient attitude.

The attitude of the average Muslim magistrate was registered, at least implicitly, in his acceptance of the oath. All judicial personnel were required to travel to the nearest tribunal—often quite far away—to take an oath, a symbolic submission to their new superiors, the magistrats of the tribunal, and the procureurs. Had they seriously objected to the decree, or seen the imposition of the oath as a sort of sacrilege, this was the time to register protests through abstension. Only a few isolated individuals failed to take the oath at this time, and their motives are not clear. Only several years later, just on the eve of the rebellion, and in one of the major rebellion centers, can one find oath refusals with political overtones.[9]

[7] Albert Billard, "Étude sur la condition politique et juridique à assigner aux indigènes des colonies," in *Congrès International de Sociologie Coloniale*, Paris, 1901, tôme 2, p. 31.

[8] Address of representatives of the Muslim magistrature of Algiers to the Emperor Napoleon III, 6 August 1860 (the occasion of an imperial visit), in F80 1725.

[9] The oath was: "In the presence of God and men, I swear and promise, in my soul

The reaction of the general public in rural areas does not seem to have been one of shock or outrage, but of apathy. The Bureau Arabe chief of Orléansville reported in October 1860: "As for the natives of the cercle, despite all our efforts to spread among the masses the noble thoughts which presided in this decree, we have encountered the most profound indifference."[10]

If discontent had not yet surfaced in the form of active grievances, there was a good reason. Even as late as October 1860, considerable confusion existed as to what the decree actually meant.

Intentions Made Clear: De Facto Elimination of the Majlis

The decree of 1859 did not formally abolish the majlis. Rather, it left it, so to speak, to wither away. It did, with considerable ceremony, grant the majlis consultative power—which to some people must have implied that the majlis would continue to exist, and might even, by a bending of the ambiguous concept of "consultation," be left to carry on much as before.

The provincial commandant of Constantine was in fact so confident of this interpretation of the decree that on 27 October 1860—a full ten months after the issue of the decree—he forwarded to the Procureur Général a proposal for the establishment of new majlis. Moreover, he stretched the definition of the Sahara and the Kabylie (not included in the 1859 decree), proposing that 1854-type sovereign majlis be created in five towns, whose jurisdictions could be stretched to cover the better part of the province.[11]

Only at some point in late 1860 did it become evident that the majlis had not been demoted to the rank of consultative assembly,

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and conscience, to remain faithful to the Emperor, to well and religiously fill my functions and conduct myself as a dignified and loyal magistrate." I am aware of only one case of failure to take the oath in 1860, that of al-Bashir Ben al-'Amri, B. Ad. 71 (Cercle/B.B.A.). But the commandant of Constantine claimed that there were many such cases. See Div./Cst. to GGA, 30 January 1861, in 1 KK 45. In 1864 the newly appointed bash 'adil and 'adil of the 27th circumscription refused oath in March. The rebellion was in May. Subdiv./Oran to Div./Oran, 16 March 1864, in 40 JJ 9.

[10] Cercle/Orlv., Report—July-September 1860, in 103 I 8.

[11] Div./Cst. to Proc. Gen./Alg., 27 October 1860, in 1 KK 289. The sovereign majlis were to be at Biskra and Bou Saâda (in the Sahara), and Bordj Bou Arreridj, Bougie, and Collo (by a loose definition, all Kabyle). But the Procureur refused to set up even the Saharan majlis. See Div./Cst. to GGA, 17 January 1861, in 1 KK 46. Reports on both Mascara and Miliana also show that the majlis kept on functioning in 1860. See Subdiv./Msc. to Div./Oran, 2 September 1860, in 30 JJ 129; and Subdiv./Mil. to Div./Alg., 1 February 1860, in 60 II 23.

but rather had been, in a roundabout fashion, abolished—not through an official decree but rather through deliberate inaction on the part of the Procureur Général, who refused to sanction the creation of new majlis. He could argue that such matters were left up to tradition, and that he thus had nothing to do with it.

When this became clear, some military officials voiced the fear that the Muslims would "resort to a clandestine justice . . . to the decisions of marabouts and tulba."[12] This was as Billard's model would predict. Here, however, I must depart from that model.

It is too simplistic in this case, and does not take account of the complexities of the judicial process. That clandestine justice existed, I would not deny; the question is one of extent. The elimination of the majlis had created a judicial void, one that clandestine justice could not effectively fill. Had it been able to do so, a crisis might have been avoided.

In a remote area populated largely by transhumants—such as the Nememcha region of the southeast Constantinois—the unofficial justice of the local marabout could still be viable. Indeed, it was probably the only viable form of justice, since, in the absence of effective police power, curse and consensus were the only reliable means of making a judgment effective. But among the settled population of the Tell (albeit settled often in tents and gourbis) the most important cases often involved not mobile property or personal injury, but land.

A marabout's baraka could be effective in patching over intergroup quarrels which had resulted in raiding (especially the theft of animals) or fighting. But when an individual, family, or lineage sought to make good a claim to a given piece of land, they needed official support. If they did not secure that official support, their opponents could. Once one had one's claim officially sanctioned by a state-appointed judge, one could secure police support in defending it, and one was more secure against confiscation by the Domaine.

By 1861 the litigant in a land dispute in the Tell faced a range of unsatisfactory judicial alternatives. The arbitration of a local marabout lacked official backing. The French tribunals were often a hundred kilometers away, if not farther. They followed unfamiliar procedures in a foreign language. The judges would not get on their mules and ride out to the scene of the dispute. And their fees were far more than the average litigant could afford. Finally, there were the qadis who were official and easily accessible, but who often had only a

[12] Div./Cst. to GGA, 30 January 1861, in 1 kk 45.

rudimentary knowledge of the law, and lacked the authority of the majlis or the Bureau Arabe qadi.

The Qadi as Point of Maximum Stress

Of all these choices, the qadis were the least impracticable; and thus they stood at the point of greatest stress in a structure which was, to say the least, poorly engineered. While tribal qadis were generally ill-suited to taking on the functions of the majlis, the fashion of recruitment in the early 1860s, guaranteeing preference to méderséens—who were often poorly educated and young—only exacerbated matters. Their being under judicial authority—and thus protected from stern and arbitrary discipline by the military and the native chiefs—further added to the unaccustomed power of the qadi.

The result was often an initial hesitancy and confusion[13] on the part of the qadi; but, in the end, the qadis accepted, some reluctantly, some with gusto, even greedily, their de facto position as judge of last resort.

The pattern is shown in the evolution of a case that would have gone to the majlis of Mascara a few years earlier.[14] A group of men from the Awlad Ben Fraiha had gone to the Procureur Impérial to complain that a qaid had expelled them, manu militari, from a piece of land they had long occupied. Called on to present his version of the story, the local commandant placed the blame on the qadi, Muhammad Ben Takfa.

He reported that the Awlad Ben Fraiha, and their opponents, the Awlad Bu 'Ali, had long worked the land in question side by side without any quarrels, until the former went to the qadi and claimed all the land, presenting documents to back up the claim. The Awlad Bu 'Ali in turn presented an act of habus, proving the entire piece of land to be their inalienable property.

It was precisely this sort of case, *where both sides had documentary backing*,[15] which under the old system had required not only a majlis but often an especially large majlis. Understandably, Ben Takfa sought to dodge the question, at first refusing to judge at all, then delivering a judgment in favor of the Awlad Ben Fraiha, but concluding that each party should retain possession of their land.

The Awlad Ben Fraiha then went to Tayib Ben Mukhtar, who

[13] See for instance, B.A.M./Mgnm., Report—January-March 1861, in 32 J 4.

[14] The Ben Tekfa affair is reported in Subdiv./Msc. to Div./Oran, 19 February 1862, in 30 JJ 130.

[15] See Chapter 2.

was referred to as "president of the majlis." Ben Mukhtar opined that "one should take account of the judgment, but not of the conclusions." Without a majlis, even he (the Amir's cousin) had to be evasive.

The Bureau Arabe chief passed the buck back to Ben Fraiha, who in turn "payed out contradictory words to everyone and demanded that the adversaries be patient for another few months." Finally, he proclaimed that the Awlad Bu 'Ali should in fact be in possession of the whole of the contested property.

Clearly, Ben Takfa did the best he could to persuade the litigants to desist. Probably he expected that a majlis would be reconstituted to rescue him from his impossible situation. As it became more and more clear that the 1859 decree was more than just a "platonic fantasy" and that the Procureur Général had no intention of reviving the majlis, Ben Takfa tried to wriggle out of his predicament in different ways. First he wrote a judgment which he said should have no effect; then, under pressure, he wrote a second judgment to cancel out the previous one—confirming the deadlock. His tactics under the circumstances were not only rather clever, but probably in the best interest of justice. For all his troubles, however, he was revoked—for "duplicitous judgments."[16]

From 1862 onward, the absence of the majlis and the new pressures bearing on the qadis came to be more acutely felt. Military reports from around the country confirm a widespread and common reaction. Litigants were reluctant to appeal a qadi's judgment to the French court; and, to add to difficulties, qadis did their best to obstruct appeals. In some instances, they could simply intimidate people or they would fail to explain the rules and procedures of appeal. Or they would refuse to register a judgment, making appeal impossible. Or they would divide cases so that no individual judgment concerned an object worth more than 200 francs, the miminum necessary for appeal.[17]

When litigants did succeed in appealing, the results were long in coming, and most men simply ran out of patience or money and abandoned their appeals before the tribunal got around to hearing

[16] Subdiv./Msc. to Div./Oran, 19 February 1862, in 30 JJ 130.

[17] For examples, see B.A.M., Mgnm., Report—April-June 1863, in 32 J 4; Subdiv./Orlv. to Div./Alg. 16 February 1862, and 16 December 1864, in 70 II 30; and Subdiv. Mil./Alg. to Div. Mil./Alg., 11 September 1863, in 60 II 13. Qadis were not allowed to judge theft cases. But when a qadi of Mostaganem was asked why he failed to obey this rule in a case, he replied ingeniously that it was simply a "property dispute," Div./Oran to GGA, 19 March 1864, in 1 JJ 14.

them. On rare occasions, when the wheels of justice managed to grind through their full cycle, they either rendered the product in its original form, confirming the qadi's judgment without commment, or ground so exceedingly fine as to make the product useless.

The Tribunal of Mostaganem awarded one man three times as much land as he had asked for in the first place, perhaps out of misunderstanding, perhaps out of pique that the opponent had not even bothered to appear in court or to delegate an attorney. The winner was so embarrassed that he renounced the judgment and came to a private agreement with his opponent.[18]

And when the Cour Impérial received an appeal on a case which had been judged in contradictory fashion by two different qadis, it issued a judgment which "put the parties into the same and identical condition as before."[19] This seems to me to far outstrip Ben Takfa on the score of evasiveness.

The Médersas: an Inadequate Remedy

Within the framework of the 1859 system, the only conceivable resolution to the problems of Muslim justice lay in the médersas. At some point, most likely in 1862, the Governor-General issued a directive to appoint or promote médersséens whenever possible.[20] He hoped, no doubt, that these young men, having sat for a while in a French school, would have absorbed, by some miraculous osmosis, enough principles of high civilization effectively to handle complex disputes and happily aid in the incorporation of the French appeal courts in the Muslim judicial system. The likelihood of this happening, at least in the few years which fate had allotted to the 1859 system, was minimal.

True, a substantial effort was made to attract students from a wide geographical base. But this was made feasible largely by the fact that prospective students could "see the more immediate results which the médersa procures for its students."[21] The fact that the médersas could lure students was by no means a guarantee that they would lure good students. In fact, the promise of a quick job without having to pass exams or to meet any clear standards, not to mention free

[18] B.A.M./Msc., Report—October-December 1862, in 24 J 8. See also B.A.M./Med., Report—Octobert-December 1863, in 50 II 254.

[19] Subdiv./Orlv. to Div./Alg., 27 March 1864, in 70 II 30.

[20] Div./Cst., Inspection Générale—1864, in 1 KK 50. Probably the policy was established in a directive from the Governor-General.

[21] B.A.M./A. Moussa, Report—October-December 1861, in 31 J 2.

room and board, probably tended to draw a rather mediocre clientele. The médersa could add little to previous zawiya education, but simply furnished a useful credential.

The médersa graduates of the time often proved of questionable competence as judges; and, further, they were seen as crass opportunists, if not renegades. The médersas could not, however, fill all the openings in the judicial system, for, despite all efforts, they could not draw students from a wide enough geographic range, and under the present system there was little incentive for a man to accept a position far from his home region.[22]

Discipline Problems: the Grands Chefs Lose Their Grip

As the qadis came to recognize the extraordinary position they occupied, they tended to become more independent, and even displayed arrogance toward the general population and insolence toward the military authorities and the native chiefs. Their position seems to have lent itself to their trying to establish themselves as leaders of factions opposed to the local native chief, within military-controlled tribal areas, and to their attempting to gain leverage through a curious alliance with colons and civilian authorities. Such was the case of Tahar Ben 'Abassa, a qadi in the cercle of Mostaganem, "crafty by habit . . ., one of the *frondeurs* with little or no comprehension, who tried to push the population surrounding European centers to a demonstration against military authority."[23]

Ben 'Abassa was locked up in Mostaganem for his debts, and in order to save himself from revocation he sought the advice of a European lawyer. This proved futile, as the commandant was only too glad to seize the occasion to have him punished for his political antics. But, as a gesture, it rather captures the spirit of a certain type of qadi, the one who delighted in launching into political schemes and maneuvers and generally indulged in dubious financial dealings.

One of the areas where the decree provoked the most turbulence was the Ferdjioua, preserve of the recently deposed (in 1861, the

[22] Evaluations of Médersèens who entered the judicial service at this time are generally unfavorable. For a conflict between a médersèen and a local qadi, see Subdiv./Cst. to Div./Cst., 5 July 1864, in 30 KK 17. See also complaint by 'adil against a chef de douar, over general harassment, Hakouma Register/Msc., 3 October 1863, Case No. 33, in 34 JJ 35.

[23] Subdiv./Mgnm. to Div./Oran, 6 September 1861, in 40 JJ 8. His "fronde" was in 1858, and quite similar to that which got Ben Qaid 'Umar into trouble. On qadi money lending, see B.A.M./Med., Report—October-December 1863, in 50 II 254.

French confined him to the city of Constantine) chief Bu 'Akkaz.[24] One of the qadis of this region, al-Filali Ben al-Filali, had the tenacity to visit the provincial Arab Affairs director, Colonel Gresley, to complain that Bu 'Akkaz "hindered him." Shortly after this, he wrote a letter repeating his complaint. Bu 'Akkaz, he said,

> aims to substitute his power for mine, and for this reason, he instituted representatives of his authority who prepare marriage contracts, pronounce divorces, and perform other acts which completely paralyze my action. When I pointed out to him that this was contrary to the law and to the Imperial regulation, he publicly insulted me.[25]

Al-Filali cannot be seen as an independent marabout who had long struggled against the tyranny of Bu 'Akkaz, for he had been presented by Bu 'Akkaz as his personal candidate for the post in 1860.[26] Rather he was an ungrateful client who, as soon as Bu 'Akkaz had been deposed, asserted his independence and opportunistically sought to take advantage of the situation. To remind him of his place, Bu 'Akkaz arranged for a group of toughs to attack al-Filali's smala (camp) and beat up students of the small school he ran. The tactic bears a curious resemblance to that used some twelve years earlier in dealing with Mawlay Shaqfa.[27]

In the case of minor figures such as Ben 'Abassa and Ben al-Filali, the qadi could be disciplined, by formal or informal means. They posed problems, but neither was powerful enough to be a force that would have to be contended with on a long-term basis.

This was not the case, however, of the qadi who became involved in an altercation with the qaid of the Segnia in July 1862. Entering the qaid's burj for an administrative meeting, he addressed a general greeting to all those present. The qaid, not being addressed personally, took insult and launched into a tirade against the qadi, condemning him for the irreverent manners he habitually displayed. Growing ever angrier, the qaid finally blurted out: "Do you take me

[24] On Bu'Akkaz, see Charles Feraud, "Ferdjoua et Zour'a: notes historiques sur la province de Constantine," *Revue Africaine*, 22 (1878), pp. 161-182. In January 1861 the Commandant of Constantine complained, "Already these native chiefs (Bu 'Akkaz and Muqrani) have felt their power undermined. Are they going to reaffirm themselves when the qadi's first instinct is to render himself independent of the local chief and perhaps to create problems?" Div./Cst. to GGA, 30 January 1861, in 1 KK 45.

[25] Al-Filali Ben al-Filali to Col. Gresley, 2 August 1861, in 6 H 25.

[26] Subdiv./Cst. to Div./Cst., 18 February 1860, in 30 KK 11.

[27] Subdiv./Cst. to Div./Cst., 1 April 1862. On Mawlay Shaqfa, see Chapter 1.

for the son of your sharecropper?" Whereupon the qadi broke into a rage, retorting: "Neither am I the son of *your* sharecropper!" He then left the burj, riding his mule to the nearest mosque, and refusing to return. Another man might have faced serious consequences for treating a qaid so lightly, but this was Muhammad Ben 'Abd al-Qadir Ben 'Ali Bu Talib, a nephew of the Amir. And not a soul dared harm a hair on his head.

After the incident, he wrote letters, outside the sacred voie hiérarchique—to the Procureur Impérial in Constantine, and to the Procureur Général in Algiers, demanding that the qaid be taken before a tribunal and made to expiate his insults. Like Ben 'Abassa, but in a more sophisticated way, he instinctively knew that he could profit by turning to patrons in the civil regime.[28] The importance of that instinct, however, would become clearly evident only several steps into the future. The present was dominated by often obscure rural marabouts, like the hapless al-Hajj Bashir Ben Khalil.

6.3 Rebellion—1864–1865

If war, as Clausewitz had it, is diplomacy continued by other means, then rebellion, I think, is justice continued by other means. In the early 1860s, Muslim justice in Algeria experienced grave problems; with no satisfactory means for their settlement, disputes easily spilled over into violence. First came frequent brawls between frustrated litigants seeking to lay claim to a disputed piece of land. With the announcement of the Senatus Consulte of 1863, which confirmed tribal property rights and spelled out a plan for the division of tribal lands into private property, the tensions were accentuated, as individuals and groups sought to gain legal recognition for their claims in anticipation of the decree's application.[29]

The Assassination Wave

In many cases, discontent was channeled into a personal vendetta against a qadi. It was as if open season had been proclaimed on these

[28] Div./Cst. to GGA, 14 July 1862.

[29] On fights and general discord, see B.A.M./Mil., Report—January-March 1862, and February 1861, in 62 II 13; Subdiv./Mgnm. to Div./Oran, 18 May 1865, in 40 JJ 11, and 4 April 1861, in 40 JJ 8; and Subdiv./Msc. to Div./Oran, 13 February 1864, in 30 JJ 130. Maneuvers in preparation for the Senatus Consulte are evident in the reports on individual tribes, for example the Awlad Sidi Yahya Ben Talib, in the Cercle of Tebessa.

usually peaceful and relatively harmless beings who, by a quirk in the evolution of the political ecology, had been transformed, over a span of four years, into wild beasts of prey.

In early May 1864, Muhammad Ben 'Abd al-Rahman, qadi of the Awlad Bu 'Aun (Cercle of Batna), awakened to a volley of seven shots ripping through his tent. He may have been, as an officer later said of him, "one of those old-time judges whose dishonesty is proverbial," but under normal circumstances this would not have called forth such an assertive protest. In this instance, the qadi was unharmed, though one of his sharecroppers was seriously wounded.[30]

In the cercle of Cherchell, two qadis of neighboring circumscriptions were attacked, both under exactly the same circumstances—an ambush on a country road—but in entirely separate incidents. On 25 March 1864, 'Abdallah Ben Sahrawi, qadi of the 65th circumscription, was shot and seriously wounded. The apparent reason was that he had ruled against the qaid in a land dispute. The qaid, to avenge himself, had one of his hangers-on shoot the qadi, and tried to stifle the investigation by subborning witnesses.[31]

On May 1, Muhammad al-Handi, qadi of the 64th, was riding home from a session at the Sunday market of the Beni Menasser, accompanied by his father, himself once a qadi. Going around a bend, he was shot from an ambush in the trees. He bled to death at his father's feet. The culprit was a man who had had a dispute with al-Handi over a piece of land that his father had sold to the qadi, which he had unsuccessfully tried to pre-empt through the right of shafa'a—a type of dispute which, at least in the Mascara region, had gone to the majlis.[32]

In this subdivision of Aumale, in April 1865, Yahya Ben 'Arus, a former qadi, now a bash 'adil, was shot and wounded as he set out to testify before a juge d'instruction over a case of forgery. And Rabah Ben Bilqasim, qadi of Bouira, was shot and killed before setting off to Aumale to respond to accusations of corruption which had been lodged against him.[33] Finally, in that same year, 'Abid Ben Difallah, qadi of Bou Hadjar (near La Calle in the northeast Constantinois), survived an assassination attempt.[34]

[30] Subdiv./Batna, 9 May and 4 July 1864, in 10 KK 35. Comment in 5 January 1867, in 10 KK 37.

[31] Deuxième Conseil de Guerre, session of 26 July 1864, in 1 Q 466.

[32] Deuxième Conseil de Guerre, session of 25 June 1864, in 1 Q 467.

[33] See P. Bourjade, "Notes chronologiques pour la region d'Aumale," *Revue Africaine*, 34 (1890), pp. 5-42.

[34] F. Rens.: Abid Ben Difallah, in Dossier C.P.E. Souk Ahras (1910), in 16 H 31.

In this brief period, there were more assassinations (or attempts thereat) of qadis than there were, to the best of my knowledge, in the entire remainder of the period under study.[35] The most straightforward explanation was offered by one of the survivors, Ben al-Sahrawi, who told investigators: "My position as a Muslim magistrate, I know, has made me enemies. That's the situation for all of us qadis." There may, however, have been another factor: propaganda against the qadis, circulated by certain brotherhoods, which may have helped to provoke or legitimize the attacks—which were, however, personal in origin and motive. Cherchell, there is reason to believe, was a center of such propaganda.

Qadis as Rebels and as Victims of the Rebellion

The depth of hostility to the qadis in this period can scarcely be understated. Indeed it can be found as a significant propaganda theme. There was reported to be circulating in the Dahra (a mountain region in the west of the Province of Algiers and the east of Oran) the following prophecy, spread by the Tayibiyya brotherhood: "The people of the Dahra will hold a meeting on this side of Fez. They will join the Sultan at Tlemcen. He will slit the throats of a thousand qadis known for their injustice, with a well sharpened knife."[36]

In the spring of 1864, widespread rebellions broke out, beginning in the Dahra and the south Oranais, and spreading eventually to the south Algerois and the Petite Kabylie.[37] Qadis were often among the

[35] I am aware of four other slayings: Ahmad Ben Thami, Cercle/Tlm., 1854 (an arrogant Tlemceni townsman slain by a poor tribesman); Tahar ou Shaikh, Cercle/Boug., 1869 (the qaid did it); Sa'id Ben al-Muhub, Cercle/Cst., 1875, and 'Ali Ben Shabaha, Cercle/Bsk., 1883 (both connected to quarrels over divorce). Qaids tended to have a larger fatality rate.

[36] "Prophétie répandue en 1861 et depuis dans le Dahra venant de Mouley Thaieb (Maroc)," in F80 1678. The prophecy continues: "The friend will be neglected and the prettiest woman will sell at four *flous*."

[37] The most important archival sources on the 1864 rebellion are: B.A M./Mgnm., Reports for 1863 and 1864, in 40 JJ 30; B.A.M./A. Moussa, Reports for 1864, in 31 J 2; B.A.M./Msc., Reports for 1862-64, in 24 J 8; B.A.M./ T. el-Had, Report for the Year 1865, in 93 I 6; Subdiv./Orlv., dispatches sent to Algiers, January to June 1864, in 70 II 30; "Rapport politique sur l'insurrection de 1864," by the Governor-General, in F80 1679; Extract of report by Col. Lallemand (Com. Sup./Orlv.), 14 June 1864, in F80 1679; "Interrogation du nommé Ahmed Ben Mouley Mhammed, Mokhaddem qui a dirigé l'attaque contre le bordj de Zeraia," in F80 1679. Asked why he got involved in the rebellion, Ben Mouley Mhammed immediately recited his grievances against the qadi of Zouagha, one related to irrigation rights, the other to a woman. The interrogators paid no attention to this, because they were looking for a brother-

victims or targets of the rebellion. Some were leaders or participants. But most of the principal leaders were independent marabouts.[38] I do not maintain that the rebellion was caused by judicial policy, simply that the 1859 decree was plainly one of the causes.

What I do maintain—and I hope that Algerian scholars will pursue the subject—is that the rebellion represented a general crisis of the Algerian religious elite and marked a turning point in its structure and orientation. With the suppression of the majlis, the arrest and public trial of prominent fuqaha, the close surveillance and occasional harassment of zawiyas and brotherhood activities, rabid criticisms of Islam and religious leaders in the colon press, and the attempt to institute a monopoly of judicial recruitment for the médersas, the religious leaders felt seriously threatened. For the old leaders, this was a sort of dernier baroud, a last desperate battle. Marabouts and brotherhoods would survive, but shorn of much of their real power. In 1871 they would play a secondary role to the grand chef Muqrani. But the rebellion helped set the stage for the emergence of a new set of leaders, the spiritual (and indeed genealogical) grandfathers of the 1930s 'ulamists. And Muslim justice was often a vehicle of their ascendance.

In the rebellion, the involvement of qadis depended largely on the local political situation. When qadis were attacked, it was generally for an alleged injustice, or out of personal rivalry. They were not, to my knowledge, directly denounced as "collaborators." Similarly, defections were usually the result of the local political situation. The essential point is that behind all the local incidents lay a systemic

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hood conspiracy. On the Algerian view of events, see Si Hamza Boubakeur, "Origines de la guerre Sud Oranais contre la France," *Revue d'histoire maghrébine*, 6 (1974), pp. 139-149.

[38] The following were revoked as a result of the rebellion:

Cercle	*Qadis*	*Bash 'Adils*	*'Adils*
Bogh.	–	3	3
Djidj.	1	–	2
Set.	1	–	–
B.B.A.	1	1	–
Aum.	2	1	–
Ten.	1	–	–
Mil.	–	–	1
Msc.	3	–	2
Mgnm. and A. Moussa	3	3	1
Totals	12	8	9

Also, several magistrates from Saharan mahkamas defected during the rebellion.

factor: a judicial structure which made qadis the objects for the venting of accumulated frustration, but which also stimulated their political ambitions.

Among the defectors was, of course, al-Hajj Bashir Ben Khalil, ex-president of the Mascara majlis, who was arrested at the very outset of the rebellion and interned in Corsica, never to be heard from again. His brother 'Amar, also a qadi, defected. The reason for al-Hajj Bashir's arrest was not specified in the dispatch reporting the event, only termed serious.[39] Conceivably he saw the rebellion as an opportunity to do what he had not been able to achieve during his stay in Mascara—overthrow the Agha of Frenda and become a grand chef in his own right. Whatever the case, he had little chance to do more than mutter a few seditious imprecations before the Agha pounced like a mountain lion on a stray lamb.

Other defectors may be found in all the rebellion centers—the regions of Ammi Moussa, Orléansville, Boghar, Aumale, and the Petite Kabylie. A typical defector was al-Hajj Tahar Ben Bashir, qadi of the 43rd circumscription of the Province of Constantine, near Djidjelli. He and his relatives, a small maraboutic fraction of the Rishia, were in contact with dissidents in the Babor to the West, where the insurrection had flared in late 1864. Two themes dominate their activities: urging the tribes to refuse to pay taxes, and promoting opposition to the qaid, Muhammad Bu Araur, himself a marabout (though report has it that he lost his baraka when he confiscated the flocks of the Rishia). The qaid, Ben Bashir claimed, had poisoned his brother (who had also been a qadi)—a theme he may have borrowed from Sliman Ben Hamza, chief of the insurgent Awlad Sidi Shaikh, who claimed that the French had poisoned his father.

In January 1865 Ben Bashir came to Djidjelli to buy cotton goods for the rebels, but he was recognized by a mukhazni (a native police agent) and arrested. In March, he managed to escape by digging a hole through the prison wall with a piece of his bed! Naturally he attempted to depict the incident as proof of his great baraka.[40] However, his activities, once free, seem to have been limited to trying to make contact with partisans of Bu 'Akkaz, the perennial conspirator of the Ferdjioua, and to threatening a raid against another qadi of the vicinity.

These incidents seem colorful but trivial. And this was, in many ways, the dominant character of the rebellion. The most important

[39] Subdiv./Msc. to Div./Oran, 10 May 1864, in 30 JJ 133, and 11 April 1865, in 1 J 22.

[40] Cercle/Djidj. to Subdiv./Cst. 27 January, 7 February, and 7 March 1865, in 33 KK 18.

outbreak, in the South Oranais, reportedly began with Si-l-Fudayl al-Msili, khuja of Sliman Ben Hamza and qadi al-jihad (a qadi whose principal duty is to assure that Quranic injunctions are followed in a holy war and especially in the division of the booty) of the Awlad Sidi Shaikh rebellion, got into an argument with a spahi over the movement of a chess pawn.[41] This was not so much a rebellion as a series of rebellions, with numerous attempts at coordination, none of them successful. It is best understood as the sort of "fusion of discontents" of which Billard spoke.

By far the most curious incident of this curious rebellion was what I would like to call the "Cherchell shaytana letter." The concept of shaytana—doing the devil's work—was quite simple: one tells lies to get one's enemies in trouble. This letter was found by a colon on the road between Ténès and Orléansville. It had, the presumption was, been dropped by a rebel courier accidentally. It was addressed to eight individuals in the cercle of Cherchell, almost all qadis or relatives of qadis.

They were interrogated by the commandant of the cercle, who duly noted transformations of facial color as he grilled the suspects with questions. But he soon dropped the whole affair for lack of proof,[42] and probably because he was clever enough to avoid being duped by one of the more common tricks in the Algerian repertoire of underhanded political tactics.

6.4 The Aftermath: New Men . . .

The rebellion proved Lamoricière's wisdom: men of the word needed to be appeased, taken account of. Those who led the rebellion were jailed or forced into hiding. But the rebellion also provided the occasion for other men of their class to make themselves indispensable.

First, there were the local marabout-qadis who had proved loyal to the French. Among them was al-Hajj Mustafa Ben Bu Zaghti, a qadi near Orléansville and son of an old Bureau Arabe qadi and Conseil de Jurisprudence member, who now ran a zawiya in the area.

[41] The chess argument is the version of Si-l-Fudayl himself, recorded in Bou Bakeur, "Origines de la guerre."

[42] Subdiv./Mil. to Div./Alg., 2 June 1864. The letter also fingered some magistrates in the Cercle of Orléansville. See Subdiv./Orlv. to Div./Alg., 1 June 1864, in 70 II 30. The letter was allegedly from Mawlay Mustafa al-Susi al-Hasani. Another curious incident in Cherchell involved a talib, Muhammad Ben Zada, son of one qadi and cousin of another. He was a Darqawa muqaddam, and reportedly quite fanatic. See Subdiv./Mil. to Div./Alg., 25 August 1864. I would suspect that he or somebody like him wrote the letter.

Al-Hajj Mustafa played a crucial role in keeping local tribesmen calm and thus containing the insurgency within the Dahra.[43]

Another was Sa'id Ben al-Muhub, a descendant of a marabout of the Beni Bezaz in the Petite Kabylie, and qadi of the Babor in the heart of the insurgency area. He rendered "valuable service" during the rebellion, for which he was promoted to a post closer to his adoptive home of Constantine[44]—where his son would become mufti and a leader of the "local islah" of the 1890s.

Second, the Amir 'Abd al-Qadir in particular made himself even more indispensable than he already was. He had won a place in French hearts by valiantly helping to defend the Christians of Damascus against the rampaging Druze in 1860. At the time of the rebellion, he was living in Mecca, where he had been for over a year. Mecca may have been, as he claimed, a nice refuge from the bothersome horde of clients he had accumulated in Damascus. But it was also a good place to conspire with Algerian pilgrims, out of sight of the informants of the French Consul.

Analyzing the rebellion, Governor-General MacMahon noted that, in Mecca, "there is no doubt a committee which holds in its hands the strings which control Muslim agitation." He went on to say, however, "I do not want to say anything against 'Abd al-Qadir, whose conduct during the Damascus massacre was worthy of praise. However, it is difficult to believe that, visited by the principal tribal chiefs of Algeria, he could suppress his old resentments."[45]

Returning to Damascus in late June, by which time the rebellion had clearly failed, 'Abd al-Qadir told the French Consul "that news of the revolt caused him great chagrin. He did not understand such a movement at a moment when the Emperor had just conceded to the Arabs property of their land (by the Senatus Consulte)."[46]

The French accepted the disclaimer at face value. Some went so far as to suggest that he be placed at the head of an Arab (and pro-French, naturally) Kindom in the East. He was also of use, according to some reports, in maneuvers to secure the right to build the Suez Canal. As far as Muslim justice was concerned, he would never directly enter the scene, but his presence was clearly felt in the large number of close relatives of his appointed to judicial posts. They had

[43] Notes biographiques, Cercle/Orlv., 15 March 1865, in 10 H 79.

[44] Div./Cst. to GGA, 8 June 1866, in 1 KK 50.

[45] Rapport politique sur l'insurrection de 1864, in F80 1679. See also *Le Constitutionnel* (Paris), 26 June 1864, which claims that the rebellion was "hatched at Mecca in 1863."

[46] Archives de la Min. Af. Et., Consul/Damascus to Min. Af. Et., 1 July 1864, in Damas VI.

been present before 1864, but afterward that presence was to verge on dominance in certain regions.[47]

The third category to emerge from the rebellion strengthened was a small number of articulate urban fuqaha.[48] The most prominent of them were al-Makki Ben Badis and Hasan Ben Brihmat. Though few, they were in many respects the most important. They had little influence over the rural masses—they could neither prevent nor provoke a rebellion. But Ben Badis in particular was capable of articulating political positions and demands. The French were definitely in a mood to compromise and make concessions: they were involved in a misadventure in Mexico, and European tensions were growing. So, under the circumstances, Ben Badis' measured and eloquent militancy suited their needs quite well. He was not a messianic mawl al-sa'a, but in 1865 he was certainly the man of the hour.

Al-Makki Ben Badis came from an old and honorable Constantine family, renowned over the centuries for their learning—for forty generations, it was said. Born about 1820, he was still quite young when the French arrived in Constantine in 1837, and this I think helps to explain how he learned French so well. From the early 1850s onward, he held a number of judicial posts, and, like Ben Qaid 'Umar, he "served on all the commissions." Like Bel Qaid, he was a farmer, and receptive to the latest methods. But, unlike his Oranais colleague, he devoted himself to his official duties, probably leaving administration of the farms to his brother L'arbi. Like the Agha Bel Mukhfi, he acquired a mill, but not by legal chicanery. He had it built himself. The Prefect of Constantine described him in respectful, even admiring terms: "While he has conserved intact his religious character, he has definitely entered onto the path of progress." He was, in short, "*un magistrat hors ligne.*"[49] Among the many commissions on which he sat was the Conseil Général of Constantine, and it was here above all that he put forth his position, in a fashion very unlike that of the stereotype "beni oui-oui." At the session of

[47] See Chapter 7.

[48] For an expression of this group's attitude, see a letter from Algerian notables to Napoleon III, in *Le Temps*, 17 May 1865. They ask the Emperor to understand the rebellion as a result of poverty and ignorance, not religion or religious propaganda.

[49] The Gouvions' *Kitab al-aâyane* claims that al-Makki played an important role in the surrender of the city in 1837, but this seems unlikely, since he would have been only about seventeen years old at the time. On a land concession (188 hectares at Medjez Sfa, with his brother L'arbi), see *B.O.A.G.*, 1857, pp. 33-34. On mill, *B.O.A.G.*, 1855, p. 327. On a large land purchase (1,200 hectares from a European at Sidi Tamtam), *L'Africain* (Constantine), 2 June 1866. On family background, Cherbonneau, "Notice sur Mohammed Be Bou Diaf." The prefect's panegyric is in his proposition for the Legion of Honor for al-Makki, 1860, in F80 1678.

21 September, he addressed one of the central issues of judicial policy:

> For two or three years now, whenever the administration has needed an 'adil, it has taken him from the médersa. When it needed a bash 'adil, it has taken him from the corps of 'adils. And when it needed a qadi, it chose from among the bash 'adils. Thus, in the space of a short time, an 'adil becomes a bash 'adil becomes a qadi. But there exists a considerable difference between the instruction and knowledge necessary for a qadi and that needed for an 'adil. The man who is raised to the position of qadi should be distinguished by his learning and his profound knowledge of that which a magistrate should know. He should possess an authentic certificate signed by a number of celebrated 'ulama, by members of an examination commission appointed by the administration, stating in precise terms the aptitude and capacities of the candidate.
>
> Considering that most qadis in the Province of Constantine actually in office are absolutely incapable of writing a letter, or understanding the sense of expressions and turns of phrase used in judicial documents, assuming they can even manage to read them, to say nothing of understanding the text books of law and jurisprudence. . . .
>
> The Conseil Général emits the resolution that the administration should inaugurate a new mode of recruitment destined to impart regularity to the judicial service and safeguard the rights of litigants.[50]

A European colleague pointed out that this was tantamount to "incriminating" the administration's choice of magistrates. Diplomatically, al-Makki replied that he merely wished to point out that there existed, outside the médersa, plenty of well-qualified candidates. The Conseil promptly approved the resolution.

Not long thereafter, al-Makki headed for Algiers, to sit on the Gastambide Commission, strong not only by his family name and his eloquence, but by the official backing of the highest political organ of his province. He had not only learned the way the system worked. He had mastered it.

. . . *and a New System*

The Gastambide Commission was convoked by the Emperor following his visit to Algeria and the publication of a pamphlet in which

[50] Al-Makki Ben Badis, in Con. Gen./Cst., 21 September 1865.

he decried, among other Algerian ills, the appalling situation which Muslims faced in the field of justice, beset as they were by rapacious agents d'affaires, and judges who did not know the first word of Arabic and who always insisted that women unveil when they testify before the tribunal.[51]

It was an illustrious group, headed by Eugène Gastambide, an auditeur of the Conseil d'État, and conseiller of the Cour de Cassation in Paris. The Commission included among its European members: Pierrey, framer of the 1859 decree and now President of the Cour d'Appel; Robinet de Cléry, Procureur Général of Algiers, and advocate of moderate, gradualist assimilation;[52] Ismaël Urbain, mulatto, Saint-Simonist, advisor to the Government-General on native affairs, and a favorite figure of recent French historians; and Colonel Gresley, head of the Political Bureau and an old Bureau Arabe hand.

On the Algerian side was the most distinguished group of notables ever assembled, at least for official purposes, in nineteenth-century Algeria—even, I would venture to say, at Randon's horse races. Ben Brihmat and Ben Badis I have already discussed. Hamza Ben Rahhal, a former qadi and now "caïd des caïds" of Nédroma and the Trara, came from one of the most notable learned families of the West, a reputation which continued into the twentieth century. Tayib Ben Mukhtar was a relative of the Amir and quite learned in his own right, but he did not have the stature of the above figures, in the field of letters. Muhammad Sa'id Ben 'Ali Sharif, qaid of Chellata and head of a famous zawiya, was a favorite of the French in this period, and an arch-rival of Shaikh al-Haddad, whom he nevertheless joined (very reluctantly, he would tell the Cour d'Assises) in the 1871 rebellion.

Al-'Ayashi Ben Barnu was mufti of Mostaganem, and a former member of the Conseil de Jurisprudence, not a giant by any means, but an important and interesting man. Sliman Ben Siam was honorary Agha of Miliana: like Ben 'Ali Sharif and Ben Rahhal, he was an articulate and lettered native chief. The only man missing was the Bash-Agha Muqrani, leader of the 1871 rebellion and the most powerful of the grands chefs of the day; but he was, I suspect, represented by two clients, Hajj Muhammad Ben Zaghuda and his son, Muhammad Ben al-Hajj Muhammad.[53]

[51] Napoleon III, *Politique de la France en Algérie*, Paris, 1865.

[52] See Proc. Gen./Alg., "Note sur la justice musulmane en 1868," in F80 1725. He seems seriously to have felt that French justice had to prove itself to the Muslims, not be imposed.

[53] On Muqrani-Ben Zaghuda relations, see Div./Cst. to GGA, 20 September 1869,

The procès-verbal of the Commission would be quite interesting, if it can ever be found. A summary of the proceedings in Gastambide's report[54] indicates that there was heated debate on the majlis question. From the personalities involved, I would wager that the most voluble debaters were Pierrey and Ben Badis, the former refusing to countenance any recreation of the majlis, and the latter insisting on nothing short of a completely autonomous majlis, and casting nicely veiled aspersions on the intelligence and motives of anyone who thought they could improve on Islam. Robinet de Cléry and Ben Brihmat probably pushed for a pragmatic compromise.

The end product, the decree of 1866, was a refusal of the central demand of the Muslims—reconstitution of the sovereign majlis—and a granting of a wide variety of compensating concessions. Regularly appointed consultative majlis were to be established; special Muslim chambers were to be established at each tribunal, and the Muslim assessors, though outnumbered by French magistrats, would be given deliberative votes; a Conseil Supérieur de Droit Musulman would be created to furnish opinions on thorny questions to the Cour d'Appel or the Tribunaux; qadis were to be salaried, and divided into a three-tiered class system; circumscriptions would be sharply cut in number to permit an elimination of all the "dead wood," and to assure that only the best would be qadis: judicial personnel were to be recruited by examination.

Of all the aspects of the decree, the last three were the crucial ones. Salaries, centralization, and examinations marked the onset of bureaucratization. The new system contained innovations, but it stood to be viable: in a sense, it corrected the mistake made in 1854 and compounded in 1859, for it assured that qadis would be recruited through a rigorous selection process, and that, presiding over large circumscriptions, they would have a good deal of prestige, authority, and, to be sure, revenue.[55] The exams carried an especially important

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in 1 KK 54. Muqrani is said to have sponsored L'arbi Ben Zaghuda's nomination as qaid of the Segnia. I am assuming that L'arbi was from a different branch of the same family, and that the Bash Agha Muqrani had similar relations with both branches. The family had been important in beylik politics in Constantine prior to the colonial period. Al-Hajj Muhammad had been qadi of Philippeville, and then switched with his son, who was qadi of the Mitidja, the fertile plain surrounding Algiers. The Algiers-Philippeville connection suggests that they may have been involved in commerce.

[54] The report is in Pinson de Ménerville, *Dictionnaire* (1866), beginning on p. 199.

[55] See for example, B.A.M./Med., Report—January-March 1866, in 50 II 254. The Bureau Arabe chief looked forward to kicking out "a few young magistrates who have little education, and who have the same faults as the old qadis, without even the apparent dignity."

implication: the abandonment of the médersa monopoly over recruitment. "Zawiyans" would now be able to compete on an equal footing with méderséens.

The examinations were, if one stops to reflect, a remarkable innovation. Muslim scholars, even those from institutions usually pictured as "hotbeds of fanaticism," were to assemble at central points, bend over desks at an appointed hour under the watchful eye of the pacing surveillant, and agonize for an exactly clocked period of time over a standardized examination covering a curriculum established by a Franco-Muslim commission. It was a striking mutual accommodation, the "bac" in Algerian dress. The idea, I am confident, should be attributed to al-Makki Ben Badis, as should its solid success.

Chapter 7

THOSE WHO SUCCEEDED

The first examinations were held in late November 1869. Throughout Algeria large numbers of candidates had signed up to take them. And though many did not appear on the appointed day, some 252 did present themselves to the provincial exam commissions—enough to staff the mahkamas of an entire province. Given the difficulties of transportation and communication, and the reluctance or intimidation which might have arisen due to the presence of French examiners on the commissions, the numbers stand as testimony to the wide and enthusiastic acceptance, on the part of the Algerian fuqaha, of the formula worked out by the Gastambide Commission.

In part, these candidates were of course lured by the prospect of a job. While this hunger for jobs was hardly new, the *way* of obtaining a job was new to the Algerian context. For now one could obtain a job (in principle) on one's own merits rather than having to rely on connections with a French officer, a native chief, or an influential qadi, or having to pass through an initiation to *la civilisation française* on the hard wooden benches of the médersa.

But one might also argue that the examination system tapped some old traditions. Certainly it resembled the method of examination by a majlis of prominent fuqaha, a system occasionally used in the early colonial period and, one would assume, in precolonial days. The exams also proved the occasion for the Algerians to indulge in a favorite pastime—listening to Muslim scholars vie with one another in eloquence and erudition. In Constantine the oral exams became a major public event, as large crowds filled the examination hall throughout the week.

Some of the excitement doubtless came from the fact that these exams were billed as a match between "méderséens" and "zawiyans," a chance to prove the superiority of independent religious schools over the government-sponsored médersas. The actual results of the exams were much like the compromise that had led to their establishment: each side had something with which to be pleased. "Zawiyans" accounted for three-quarters of those who passed the qadi's exam; but méderséens made a strong showing in the bash 'adil/

'adil category, accounting for just over one-half of the successful candidates.[1]

The recruitment system initiated in 1869 lasted only a decade. A decree of 11 July 1877 (to take effect on 1 January 1880) established a new curriculum for the exams. It placed stress on the French language and French academic subjects recently introduced to the médersa curriculum, such as geography and history. Henceforth, Muslim magistrates would have to know about such vital topics as Roman ruins. Further, one again had to attend the médersa in order to be considered for a judicial position.[2] The decree of 1877 can be seen as an attempt to reconcile contradictory pressures from colon politicians, who saw the médersas as a breeding ground of fanaticism, and from the native affairs experts, who saw them as crucial to the maintenance of control.[3]

The changes imposed by this decree were far-reaching. But they were, at least in this period, impracticable. Bilingual Algerians could be found, but, having a wide variety of employment opportunities

[1] Mobacher, 17 March 1870. The results were as follows:

		Qadis	*Educational Background of Those Passed*	
	Candidates	*Passed*	*Médersa*	*Zawiya*
Alg.	21	7	0	7
Oran	38	18	4	14
Cst.	30	17	6	11
Totals	89	42	10	32
		Bash 'Adils and 'Adils		
Alg.	42	11	6	5
Oran	27	16	8	8
Cst.	94	31	16	15
Totals	163	58	30	28

These were the only exams for which such detailed results were printed. For some later years, lists of successful candidates were printed, giving geographic origins, but not educational background.

[2] *Mobacher*, 10 August 1877. Further "francisation" was carried out in 1884, when the médersas were put under control of the director of the Algiers Law School. At this time, an attempt was made to channel the best médersa students into the Law School.

[3] See, for instance, GGA to Pref./Alg., 10 December 1879, in 24 S 1. The debate over the médersas was filled with vague generalizations, and laced with alliteration. Were these schools "*foyers de fanatisme*" or "*pépinières de progrès*"? These debates may have been partially inspired by such controversial personalities as Majjawi. For a typical example, see Con. Gen./Oran, session of 14 October 1881.

more lucrative than the judiciary, they were not likely to be attracted to the médersas.[4]

Thus the new policy was of limited effect, and the character of the judicial corps, especially in the office of qadi, continued to be strongly affected by earlier recruitment policies. The point is strikingly made in looking at the group of 62 qadis in office in 1892. Eight had begun their careers in 1856 or earlier, 25 between 1857 and 1869, 29 between 1869 and 1879. None recruited after 1879, under the new system, are to be found among these qadis, and, at least by previous standards, those recruited before 1886 had quite ample time to rise to qadi by 1892.

Those Muslim magistrates recruited under the open system of the 1870s, as well as those who survived the vicissitudes of the 1860s, are, I feel, a critical group. Few of these men were simply local marabouts who had managed to ingratiate themselves with the colonial regime. Most had had to prove that they were well educated and had a thorough grasp of Islamic law. They had to have the political capacity to survive the diverse pressures which came to bear on the colonial qadi. They had to master the rules and procedures laid down by the French administration. And in many cases they underscored their dedication by following their careers to distant regions. In brief, they were those of the Algerian religious elite who, by aptitude or necessity, proved they were best able to adapt to the colonial situation.

This group is also of considerable political interest. For, as the colon politicians launched increasingly vigorous attacks against Muslim justice in the 1880s, the qadis came, willingly or not, to the center of the political stage. Among the qadis, along with the médersa professors, one can find many of the principal political spokesmen of the period, as well as leaders of what Malek Bennabi has called the "local Islah," the Islamic cultural revival movement of the late nineteenth century and forerunner of the well-known 'ulamist movement of the 1920s.[5]

The major questions that I seek to address in studying these men are: (1) how the career patterns of magistrates in succeeding generations differed; (2) whether career patterns show marked regional differences; and (3) what sorts of men or groups of men proved most successful.

[4] Recruitment appears to have been difficult in the late 1880's, even though exams were offered in twenty-six different centers, and advertised for two months ahead of time. See *Mobacher*, 2 June 1886.

[5] On the "local islah," see Chapter 8.

7.1 Methodology

These questions can be approached in two different ways: first, through quantitative methods in the manner of a collective biography, and, second, by focusing in detail on individuals or groups who stand as representative of a specific type and/or have a special importance of their own. Of these two approaches, I have found the latter more valuable. It is important to explain the reasons for this and, at the same time, to offer some insights on the raw material that has gone into this study.[6]

First, there is the simple matter of cost and benefit. Quantitative analysis in a case such as this, where one has to start entirely from raw, undigested data, is extremely time-consuming and, if a computer is involved, can run to considerable expense. Because I was able to come up with substantial results in working with a hand-counted sample, and because of the limitations of the data available, I decided not to attempt a computer analysis.

Second, the data are patchy. For example, in the 1860s, the *Bulletin Officiel* noted if the magistrate being appointed was a médersa student. But in the 1870s this practice was discontinued, probably because the government was embarrassed to admit that many of the appointees were not médersséens. Because of the lack of extensive data on family background, wealth, and previous educational experience, it would be difficult to interpret a difference in career patterns of médersséens and non-médersséens, even if one had complete data on médersa attendance.

Third, much of the data which does exist is difficult to use. The Aix archives do contain considerable material on Muslim magistrates for two subdivisions, Mascara and Tlemcen. Over the course of time, the fiches de matricule for magistrates become more and more detailed, offering data on place of education, wealth, date of birth, and so on. But they also concern a smaller and smaller proportion of the magistrates as military territory contracts, and they stop altogether in the early 1880s, when civil control is extended over virtually all of the Tell.

Data on tribal origin can be important, but here again one runs into severe problems. The Senatus Consulte of 1863 and its various

[6] Appointments, transfers, dismissals, etc., were published in the *Bulletin Officiel* from 1860 to 1875. Afterward, one must follow them in the *Mobacher* and, later still, in the *Moniteur de l'Algérie*. The most detailed material on individual magistrates is in 1 J 55-56 (subdivision of Tlemcen), and 1 J 22-24 (subdivision of Mascara). Other materials can be gleaned from the Series H and I, and from the registers in Series II, JJ, and KK. A few of the major figures are covered in Hafnawi's *Ta'rif al-khalaf*, and the Gouvion's *Kitab al-aâyane*.

successors completely revamped political and administrative divisions in Algeria. A man recruited from the tribe of Ahl Eghris in 1860 may well have come from the same group as a man recruited from the Commune Mixte Cacherou in 1870. And then again he may not. Further, it is usually not possible to tell from what fraction of a tribe a man came. Thus when one has found a concentration of magistrates from a given tribe, one cannot pursue it to the equally important question of whether those men were concentrated in a given fraction of the tribe.[7]

Detailed quantitative studies on nineteenth-century Algeria are a possibility. But before they can be done practicably, a data bank must be built up incorporating carefully evaluated information drawn from all the available sources.[8]

Finally, it is my hope to "humanize" or "individualize" Algerian history, which, in the hands of colonial historians, has been treated largely in terms of stereotypes, or has involved only a few very well-known figures, such as the Bash Agha Muqrani, Shaikh al-Haddad, and Ben 'Ali Sharif, who all made their names in the 1871 rebellion.

In the course of my research, I have been able to compile a great deal of data on individuals and families. This data lends itself both to an "individualization" of history, and to an analysis of different types of magistrate and of the dynamics of success in judicial careers. I have thus attempted to interweave biography and sociology. The Algerian historian may be frustrated by the lack of detail, the quantitative or comparative historian by the lack of rigor. But I hope this study may help to persuade the former that detailed biography is needed and feasible, and the latter that the Algerian case can greatly enrich our understanding of a wide range of social phenomena, particularly of migration and of the transition of traditional elites to modern roles.

7.2 The Quantitative Dimensions of Change

In the thirty-six years between 1856 and 1892, over 2,000 men served in the Muslim judicial system. To simplify analysis, I have taken a

[7] One can trace individuals to their fraction of origin through lists of names provided in reports on *cantonnement* (forced settlement) in the 1840s, but these cover only a small proportion of the population. Eickelman's and Rabinow's studies on Morocco suggest to me that those magistrates who left home often came from fractions which did not control the local zawiya.

[8] A major problem for such a data bank would be to sort out and evaluate population data. This is difficult because of changes of administrative boundaries and of names of units. One might also develop files on local officials and judges, or on zawiyas and schools, from data widely dispersed in the archives and official publications.

sample comprising one out of four men who reached the office of bash 'adil or qadi. The sample was chosen by taking every fourth card from alphabetic files which I have compiled. Cards for each individual magistrate had been grouped according to subdivision of origin. In many cases the origin was ascertained from archival sources; in other instances it was deduced from a man's family name or career pattern. Unfortunately, it was not possible to trace a sufficient number of men to the more limited unit of cercle or tribe, to carry out an analysis working with smaller, more homogeneous units. The sample includes some 368 magistrates.

My initial approach was to test the hypothesis that there had occurred a sort of stabilization following the application of the new examination system in 1869, as magistrates recruited according to more rigorous, objective standards came into the system. Because my career data is amputated at either end (pre-1856 and post-1892), I have limited my comparison in this instance to those recruited in the 1860-1869 and 1870-1877 periods, as shown in Table 8.

The most substantial difference here is clearly in the magistrate's first eight years in office. In part, this shows the attrition in the ranks caused by two rebellions, in 1864-1865 and 1871. But what it reflects primarily is the trial-and-error nature of recruitment in the earlier period, as magistrates who proved ill-qualified once in office were either revoked or were dropped in a reorganization. (Major reorganization occurred in 1867, 1874 and 1881.) But as for the highly du-

TABLE 8
COMPARISON OF CAREER LENGTHS

Total Years Service	*Year of First Appointment*	
	1860-1869	*1870-1877*
0-4	34 (.26)	5 (.08)
5-8	28 (.21)	11 (.16)
9-12	18 (.14)	13 (.19)
13-16	20 (.15)	18 (.26)
17-20	9 (.07)	19*(.28)
21+	22 (.17)	2 (.03)
Totals	131 (1.00)	68 (1.00)

* N.B. Many of the cases in this group represent men still in office in 1892, who may well have had careers longer than twenty years.

rable magistrates who lasted more than 16 years, the gap is quite narrow—24% for the earlier group, 31% for the later one. Thus one is led to suspect that the examination system did not so much find the best as it did weed out the worst.

The more significant changes have to do with mobility—both upward and outward—rather than with stability. First, as for upward mobility within the judicial hierarchy of 'adil/bash 'adil/qadi, I have taken the careers of all the men who rose to the office of qadi, and divided them into three categories: those who became qadi straight away (Group A); those who rose from 'adil or bash 'adil to qadi within 4 years (Group B); and those who took over 4 years to rise to qadi (Group C). These groups correspond, very roughly, to three types of qadi: (A) the ones who were appointed largely for political reasons; (B) young magistrates with influential fathers or patrons who had to go through a brief apprencticeship before being named qadi, or men who were clearly highly qualified and simply had to wait for a qadi-ship to open up in their region; and (C) the hard-working and deserving men who worked their way up through the ranks. Their patterns of mobility are shown in Table 9. The results show that there was a significant shift in patterns between the two periods, but that it was not a radical shift. The radical shift would come only after 1880, with exams based on a heavily French curriculum and with fewer posts to be filled. No one was directly named to the post of

TABLE 9
RECRUITMENT OF QADIS BY DIRECT NOMINATION AND PROMOTION

	Year of Appointment to First Post	
	1860-1869	*1870-1877*
(A) Direct nomination	40 (.51)	10 (.30)
(B) Promotion within 4 years	24 (.30)	12 (.36)
(C) Promotion in 5 years or more	15 (.19)	11 (.34)

qadi in this period, and indeed no one appointed during this period had risen to qadi by 1892.

For the analysis of geographic mobility, I have divided the magistrates into five categories: (I) those who never moved out of a single cercle; (II) those who moved away from their home briefly, either for disciplinary reasons or to advance their careers; (III) those who moved between different cercles in the same subdivision; (IV) those who moved between different subdivisions in the same province; and (V) those who moved between provinces. In the case of category II, I have defined "only briefly" to be two years or less. Table 10 shows that if there is a critical dividing line it lies in the vicinity of 1865, for after that date, the percentages in the cleary "mobile" categories—III, IV, and V—remain virtually the same: 38 percent for 1865-1869, 40 percent for 1870-1877, 43 percent for post-1878.

Clearly, the increase in geographic mobility reflects such commonsense factors as the building of railways and the transfer of mahkamas to towns where a newcomer could live more easily than in an alien tribe. But if these were the only factors, one would see a gradual rise

TABLE 10
GEOGRAPHIC MOBILITY AND DATE OF RECRUITMENT

Mobility Type	*Date of First Appointment*				
	Pre-1860	*1860-1864*	*1865-1869*	*1870-1877*	*Post-1878*
I	143	66	33	28	5
	(.95)	(.80)	(.60)	(.47)	(.24)
II	0	2	1	8*	7*
		(.02)	(.02)	(.13)	(.33)
III	5	5	12	5	3
	(.03)	(.07)	(.22)	(.08)	(.14)
IV	3	7	8	16	4
	(.02)	(.09)	(.14)	(.27)	(.20)
V	0	2	1	3	2
		(.02)	(.02)	(.05)	(.09)
Totals	151	82	55	60	21
	(1.00)	(1.00)	(1.00)	(1.00)	(1.00)

* Reflects the increasing use of temporary transfer as a disciplinary measure.

rather than a sudden one followed by an apparent leveling out at a ceiling of about 40 percent.

This suggests that while Muslim justice was organized on a largely tribal basis, as it was before 1866, those recruited tended to regard their position as a vehicle to or a way of maintaining power and influence within a local setting. The 1866 decree introduced centralization and salaries. Moreover, these changes were accompanied by considerable publicity, which, given the importance of the native members of the Gastambide Commission and the severe tension that Muslim justice had been under from 1860 to 1865, must have had considerable impact on the Algerian fuqaha. The changes permitted—but did not cause or impose—the development of a new conception of a judicial career. Many doubtless retained old conceptions, but a significant proportion took up a new one, or perhaps adapted an old one—that of the itinerant Muslim scholar—to changed circumstances. The question then becomes: who was most likely to adopt the new conception and enter the judiciary prepared to migrate?

One's instinct in studying migratory phenomena is to look for regional concentrations. Here the most obvious contrast is between the Constantinois and the rest of Algeria, as shown in Table 11. On

TABLE 11
PATTERNS OF GEOGRAPHIC MOBILITY BY PROVINCE

Mobility Type	*Algiers*	*Oran*	*Constantine*
I	104	76	95
	(.79)	(.80)	(.66)
II	8	6	4
	(.06)	(.06)	(.03)
III	7	3	20
	(.05)	(.04)	(.14)
IV	9	7	22
	(.07)	(.08)	(.16)
V	4	1	2
	(.03)	(.02)	(.01)
Totals	132	93	143
	(1.00)	(1.00)	(1.00)

the basis of the comparison most favorable to the other provinces, combining all forms of geographic mobility, 34 percent of Constantinois magistrates were mobile, but only 21 percent of the Algerois, and 20 percent of the Oranais magistrates. As one would expect, those directly nominated seldom moved. They were generally chosen for political reasons, and, since a man's influence was usually limited to a given locality, it was natural that he would stay there if he valued its preservation. The critical comparison is between Groups B and C, and here one sees that the latter, those who took over four years to be promoted, were indeed more likely to do a certain amount of wandering in the course of their careers.

One might also ask if there existed a relationship between the two forms of mobility, that is, whether the men who accepted the hardships of leaving home were also the ones who worked their way up through the ranks. This can be done by cross-tabulating geographic and upward mobility. Here I have included magistrates from pre-1860, which tends to somewhat exaggerate the number of non-mobiles (Group I).

It should thus come as no surprise that one finds the greatest degree

TABLE 12
UPWARD MOBILITY AND GEOGRAPHIC MOBILITY

Mobility Type	*(A) Direct Nomination*	*(B) Promotion in 4 Years or Less*	*(C) Promotion in More than 4 Years*
I	106	30	15
	(.88)	(.57)	(.44)
II	4	3	0
	(.033)	(.06)	
III	2	7	9
	(.017)	(.13)	(.26)
IV	7	11	7
	(.06)	(.20)	(.21)
V	1	2	3
	(.01)	(.04)	(.09)
Totals	120	53	34
	(1.00)	(1.00)	(1.00)

TABLE 13
PROMOTION PATTERNS IN THE PROVINCE OF CONSTANTINE COMPARED WITH ALGIERS AND ORAN
(for magistrates recruited 1860-1877)

	Algiers and Oran	*Constantine*
(A) Direct nomination	37 (.57)	13 (.28)
(B) Promotion in 4 years or less	18 (.28)	19 (.40)
(C) Promotion in more than 4 years	10 (.15)	15 (.32)
Totals	65 (1.00)	47 (1.00)

of upward mobility in Constantine, the province with the highest rate of geographic mobility, as shown in Table 13.

7.3 CASE STUDIES: AN EASTERN AND A WESTERN MAGISTRATE

In order to illuminate the contrasting patterns of magistrates' careers in Eastern and Western Algeria, I have chosen two individual qadis whose lives are both fairly well documented and illustrative of particular aspects of their respective regions. The Constantine case involves a marabout from the Petite Kabylie whose attraction for the city led him down out of the mountains to serve as qadi in the immediate environs of Constantine. The Oranais case involved a man from a prominent sharifian family of Tlemcen.

A Petite Kabylie Marabout: Sa'id Ben al-Muhub

Sa'id Ben al-Muhub was descended from Sidi Muhammad Ben al-Muhub, who had founded a zawiya among the Beni Bezaz of the Babor in the Petite Kabylie, probably in the seventeenth century.

One forebear had been a favorite of Salah Bey, and another had been an important official in the administration of Hajj Ahmad, the last bey of Constantine.[9]

The family had strong ties with the chief of the Ferdjioua, Bu 'Akkaz. Two of Sa'id's relatives, Hajj Brahim and Hajj Saduq, were arrested in connection with one of Bu 'Akkaz's innumerable plots. The report on the incident asserted that Hajj Saduq served as a liaison between the city and various religious leaders of the Petite Kabylie. It was also noted that he owned a Moorish bath (hammam) in the city.[10] In short, the family were closely involved in the network of religious, economic, and political ties between the city and the countryside.

Sa'id himself was a rough and quarrelsome character, one of those who help to give qadis their unsavory reputation. He ran into conflicts with litigants for abusing his power; with sometime political ally and financial crony, Bu 'Akkaz, over the conduct of numerous enterprises of mutual concern; and even with his next of kin. At one point, he wished to marry a cousin who was living in Ferdjioua, and Bu 'Akkaz vowed to help him have his wish. However, the young woman would have nothing of the sort and fled with her brother to the protection of another qaid.[11]

Sa'id's character comes across in an incident involving a native police officer who had attempted to search his burj for a stolen cow. To begin with, it is telling that he lived in a burj, or fortified house, a symptom of aspirations to worldly political power (in contrast to the unprotected zawiya). Sa'id had not been at home when the incident occurred, but when he saw the offending officer at the market several days later he reportedly told him: "If I had been there I would have ordered my Arabs to lay you on the ground and apply the bastinado, or else I would have shot you like a pig!"[12]

Why should such an ill-tempered and arrogant man be a successful magistrate? The key seems to lie in his role in the Babor rebellion, where he had "rendered valuable services." It is of interest to note that he was related to the qaid Muhammad Bu Araur, who also had

[9] The Gouvions, *Kitab al-aâyane*, section on Constantine, pp. 110-112.

[10] Chef, B.A.D./Cst. (Charles Brosselard), "Notes sur la conduite politique de quelques musulmans de Constantine," June 1852, in 1 H 9. This rebellion is the only one of the time which clearly involved urban residents.

[11] On conflicts, see Subdiv./Set. to Div./Cst., 19 February 1873, in 40 KK 26. On enterprises, see Sa'id Ben al-Muhub to Gen. Desvaux, 12 December 1863, in 6 H 25, and Subdiv./Set. to Div./Cst., 30 April 1875, in 6 H 26.

[12] Div./Cst. to Proc.-Imp./Cst., 29 July 1869, in 1 KK 194.

an important role in the fight against al-Hajj Tahar Ben al-Bashir and the other Babor rebels.[13]

His political services were valuable enough to get him moved from the Babor back to the Constantine region, to the mahkama of the Awlad 'Abd al-Nur, and eventually to Wad Athmania. They were not, however, sufficient to win him what he most coveted—the post of qadi of Constantine. When the question was raised in 1871, the Commandant of Constantine wrote to the Governor-General:

> Si al-Muhub passes for being a legist of the first order, but his reputation is due more to his suppleness of mind than to a desirable science (knowledge of the law). He works little, and spends his life at pursuits foreign to the science of law. All that a fine, supple, penetrating mind can bring to the office of qadi, Si al-Muhub possesses. But he is missing two things essential in a magistrate, honesty of intention and the love of justice. . . . He stands as the most accomplished case of Kabyle duplicity, and in no time at all he would shake up the city and bring disunion to families.[14]

Shortly after the Babor rebellion, Sa'id's only son, Mulud, was born. When he was qadi of Wad Athmania, Sa'id took personal charge of teachng his son the Quran. But when Mulud was only nine, his father was murdered by an irate litigant whose wife he had divorced.[15]

After his father's death, Mulud went to study with one of his mother's relatives, Muhammad al-Makki Ben al-Sahrawi, also from a maraboutic family of the Babor.[16] In the old days he too had been a qadi, and it was said that he had "one of the busiest mahkamas of the region. The [local tribes] consulted him almost exclusively, and one assures that people often came from Constantine to seek his intervention."[17] One of his sons, Tayib, became a fairly typical itinerant magistrate, attending the médersa and serving in the mahkamas of Sétif, Bordj Bou Arreridj, and Ain Beida.

Thus at virtually every turn of these men's lives one sees a repeated theme: strong ties with the city of Constantine and a tendency to leave home in pursuit of a career. Perhaps the most telling detail is

[13] See Chapter 6. On relations, see notice on Muhammad Bu Araur, in report on influential personalities in the Sétif region, in 36 Mi 44.

[14] Div./Cst. to GGA, 10 June 1871.

[15] The specific manner of his death is reported in the Gouvions, *Kitab al-aâyane*, section on Constantine, p. 112.

[16] On Mulud's early life, see Dabbuz, *Nahda haditha*, pp. 135-136.

[17] Subdiv./Set. to Div./Cst., 7 September 1869, in 40 KK 23.

that people from Constantine came to the Babor to seek the advice of al-Sahrawi. True or not, the point seems clearly that these marabouts had come to identify so much with the cultural models of the city that they saw themselves as the most exemplary models of those values.

The point is driven home by the consequent career of Mulud. After the death of Shaikh Muhammad al-Makki, he came to the city of Constantine to study at the médersa. There he met a young professor of Tlemceni origin, 'Abd al-Qadir al-Majjawi, with whom he would share a major role in Constantine's "local islah" or Islamic-Arabic cultural revival movement in the late 1880s and 1890s. In 1895 Mulud was named as a professor at the médersa of Constantine, and in 1908 he became mufti of the city. In brief, he fulfilled his father's fondest hopes.[18]

This sketch helps to illuminate the mobility process in the East in a number of ways. One might compare the Ben al-Muhubs with a rather anomalous case of mobility in the Oranais, that of al-Hajj Bashir Ben Khalil of the Sdama. For him, just as much as for his Eastern counterparts, being named qadi or mufti of a big city "flattered his amour propre."[19] Like Sa'id Ben al-Muhub, he was too much of a coarse-mannered schemer to fill such a post effectively. But beyond this there were critical differences. If Ben al-Muhub could never become qadi of Constantine, he could at least find a place in a sort of halfway house, the rural environs of Constantine. In the Mascara region, a man like Ben Khalil could not find such a halfway house, for the compact, heavily populated Eghris Plain was dominated by a sharifian aristocracy who regarded him as an upstart.

Also, Ben Khalil faced a closed aristocracy in the form of the Douair and Zmela, who held the major commandment posts of the Oranais, including that of Agha of Frenda which Ben Khalil so coveted. In contrast, the local chiefs of the East, like Bu 'Akkaz, tended (periodic quarrels notwithstanding) to form quite easily symbiotic relationships with local marabouts. These relationships were not simply in the interest of keeping peace, a product of the chief's desire to exploit the marabout's baraka to lull his subjects into passivity. Rather, such marabouts seem to have been important as intermediaries with the city and thus with the beylik.

Since Bu 'Akkaz was a *local* chief, he may have had to rely considerably on marabouts in his dealings with the city and the govern-

[18] On his career, see Dabbuz, *Nahda haditha*, pp. 136-145.

[19] See Chapter 5.

ment. The Agha of Frenda, Ahmad Walid Qadi, had ties with the center through his tribe, the Douair; he was not a local chief, but rather a member of a regional political-military elite. Thus, having strong ties to the center but a rather weak local base, he needed the marabouts for local pacification purposes only. It was in the Agha's interest to keep these marabouts from gaining influence at the center, for this only stood to undermine his position and threatened to cut off his major source of strength, the backing of the government. Conversely, the Eastern chiefs seem to have been more concerned with assuring that marabouts not build up a local power base of their own, as is shown in the case of Mawlay Shaqfa.[20]

In the West, an ambitious marabout like Ben Khalil, facing two closed aristocracies,[21] had only one way to turn—southward to the Awlad Sidi Shaikh, perennial rebels of the Oranais Sahara.

This helps to explain the barriers to mobility in the West, and the lack thereof in the East. But what of the incentives? Both my own conversations with Algerians[22] and much of the available archival material point to a straightforward cause: poverty. Tayib Ben al-Makki al-Sahrawi, for instance, was reportedly quite poor. He and his two brothers together owned two mules, four cows, one garden, and a small house.[23] After the famine-epidemic of 1867-1868, and the extensive sequestration of land in the region following the 1871 rebellion, it is likely that economic pressures increased considerably.

And there was not simply sharp competition for economic resources. Baraka, too, was hotly contested in this land so well supplied with saints. Thus one finds rivalries between marabouts breaking out into open warfare, as they did between Bu Araur and Ben al-Bashir in 1865. The most notorious of such rivalries was that between Shaikh al-Haddad, a highly influential leader of the Rahmaniyya brotherhood, and Ben 'Ali Sharif, marabout and qaid of Chellata.[24]

[20] See the cases of Mawlay Shaqfa (Chapter 1), and al-Filali (Chapter 6). For a major incident pitting the Ben Ganas of Biskra against a local marabout (and former qadi), see interpellation of Governor General Grévy on the Sidi Okba incident, in Chambre des Députés, *Débats et Documents*, 25 March 1881, pp. 626-632.

[21] The implication here is important, that there was a strong division in the Oranais religious elite between the aristocratic shurfa of the wealthy centers and the marabouts of the poor, often rebellious ra'ya tribes of the outlying regions.

[22] My understanding of the Petite Kabylie owes a good deal to conversations with Mahfoud Smati, now of the Centre de Recherche sur l'Archéologie, la Préhistoire, et l'Ethnologie, Algiers.

[23] Subdiv./Set. to Div./Cst., 7 September 1869, in 40 KK 23.

[24] This argument parallels that of Gellner in *Saints of the Atlas*, but goes further,

Faced with a combination of regional poverty and population pressure, and a limited demand for religious and legal services on the local market, the ambitious marabout of the Petite Kabylie often had little alternative but to emigrate, taking advantage of the region's high educational standards, and sometimes of the Arabic-Kabyle bilingualism of the region. This "intellectual migration" paralleled a strong pattern of general migration from the Petite Kabylie, both temporary for labor, and permanent for resettlement.

Sha'ib Ben al-Hajj 'Ali: a Tlemceni Sharif

Sha'ib Ben al-Hajj 'Ali, long-time qadi of Tlemcen, was a man of distinguished ancestry, great cultivation, and remarkable success. But, in the sources available on him, there is a persistent discordant note which suggests that he applied few scruples in his pursuit of success.

He came from a wealthy maraboutic family of El Fehoul, near the city of Tlemcen, and thus fits into much the same cast as the maraboutic elite of Mascara. Like them, he claimed to be of sharifian descent. His father, al-Hajj Muhammad Ben 'Ali, had moved into the town to live the life of a prosperous rentier and devote his time to teaching. When he died, he left Sha'ib twelve sakkas of land (most families had at best one or two), as well as numerous houses and gardens.

After four years at the médersa of Tlemcen, Sha'ib was appointed imam of the mosque of Sidi Bu Madian in 1865. Four years later he was appointed qadi of the forty-first circumscription, which included his ancestral home and the tombs of numerous forbears. At the time, he was thirty-four years old.[25]

Once installed, he lost no time in making sure that he had his own way. On 24 August, he wrote to the local commandant: "When you graciously honored me with appointment to the post of qadi, I resolved to do my utmost to follow the true path (*'azamt 'ala al-ijtihad fi al-sira al-saliha*), implementing your views and in accord with your wishes, especially with regard to leading judicial personnel back to

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suggesting that some marabouts, squeezed out at home, took up a judicial career. This phenomenon depends on the marabouts having adequate educational standards, and there being openings in the judicial system. The adaptation of marabouts to changing circumstances also forms a major theme in Hugh Roberts. "The Conversion of the Mrabtin in the Kabylia," in Ernest Gellner and Jean-Claude Vatin, eds., *Islam et politique au Maghreb*, Paris, 1981.

[25] Subdiv./Tlm. to Div./Oran, 9 June 1869, in 1 J 56; and the Gouvions, *Kitab al-aâyane*, section on Oran, pp. 7-17.

the standards of the sunna and the shari'a." He goes on to report that he had done his best, but that all the subordinate personnel of the mahkama were hopelessly corrupt and ignorant. They were so ill educated, he claimed, that when they divided inheritances or split honorary fees, they had to count on their fingers. So, "out of fear of God and you (the Commandant)," he requested that all these people be dismissed.[26]

Sha'ib got his wish and more. The subordinate personnel of the mahkama were not only dismissed but also jailed on orders of the Procureur Impérial.[27] The vacant positions were filled with Sha'ib's personal nominees, the most important of whom was a fellow Tlemceni sharif, Mawlay Idris Ben Thabit, who claimed descent from a king of Tlemcen.

Ben Thabit's father had been qadi of Tlemcen and a professor of law there in the early days of the médersa. At about age sixty-five, nearly blind, he was allowed to emigrate with his family to Fez, where he allegedly had considerable influence. There he spent the waning years of his life and dissipated the family fortune. With evidently few prospects in Fez, Mawlay Idris worked his way back to Algeria, first teaching school in the Moroccan frontier town of Oujda. In 1869 he finally saw a chance for re-establishing himself in Algeria. He took the examinations in November of that year and qualified (barely—he was seventeenth out of eighteen who passed) to be a qadi. With this, and a helping hand from Sha'ib, he was able to enter the judiciary right away, and to rise to qadi in three years.[28]

While Sha'ib was useful to have as a patron, he also provoked a good deal of antagonism from some of his fellow magistrates. One qadi felt such strong hostility from Sha'ib that he beseeched the commandant not to allow him to sit on majlis which were reviewing his decisions.[29] And, in 1881, as a wave of fear swept Algeria during the Tunisia invasion and the south Oranais rebellion, Sha'ib appears to have served as an informant on the political attitudes of his fellow magistrates. At the time, the most far-fetched allegations had some credibility, for a great "conspiracy" of qadis had just been uncovered in the east Constantinois. (See Chapter 8.)

Sha'ib took the occasion to settle accounts with his bash 'adil, Mu-

[26] Sha'ib Ben al-Hajj 'Ali to Subdiv./Tlm., 24 August 1869, in 1 J 56.

[27] Subdiv./Tlm. to Div./Oran, 28 September 1869, in 1 J 56.

[28] Subdiv./Tlm. to Div./Oran, 28 September 1870, in 1 J 56. On his father, see Div./Oran to GGA, 13 October 1853, in 1 JJ 10.

[29] 'Abd al-Qadir Ben 'Abd al-Rahman (Qadi, Ghossels) to Subdiv./Tlm., 7 April 1878, in 1 J 57.

hammad al-Khubzawi. The latter had been a member of the Conseil Supérieur de Droit, and no doubt felt that *he* should be qadi. Sha'ib reported to the authorities that Khubzawi had been telling his fellow Muslims that they must ritually purify themselves after reading a letter from a rumi (European).[30] Khubzawi would later blame Sha'ib for his inability to get a qadiship. The bitterness was so strong that it clearly emerges in Hafnawi's notice on Khubzawi in *Ta'rif al-khalaf*, published over a quarter of a century later.[31]

Another important aspect of Sha'ib's life is his relation with European Arabists, who seem to have regarded him as a model qadi and often turned to him for expert advice. Thanks to the reputation he developed in this way, Sha'ib was the recipient of numerous medals.[32]

His son, 'Abd al-Salam, was carefully groomed to be such a model qadi in his turn. He studied at the médersa of Tlemcen and at the Law School in Algiers. While still only an 'adil at Ammi Moussa, he published a book, *L'esprit de la philosophie du droit musulman*, which, aside from its Montesquieuian title, offered precious little. It was a very elementary, very dry lecture on assorted fundamental points of Islamic law. It is difficult to escape the conclusion that it was published out of vanity.[33]

'Abd al-Salam's outlook is also reflected in a speech he gave before the Congrès de Sociologie Coloniale in 1900, where he said: "We hope that the French who live at our sides . . . will learn to know what our culture was, about the civilization of a people now rather asleep, that, in a word, we ourselves will joyfully come three quarters of the way along the path, as they come the other quarter."[34]

The 'ulama of the local islah movement in the Constantinois took a starting point which superficially resembled this. They, too, sensed a "sleepiness" about contemporary Muslim society. However, it was not an abstract "people" they saw as being "asleep," but real individuals. Rather than calling on Europeans to take a sympathetic view of Islam, they called on Muslims to revive themselves through re-

[30] Confidential report on the political disposition of Muslim magistrates of Tlemcen, 25 May 1881, in 1 J 57. On the Constantinois conspiracy, see Chapter 8.

[31] Hafnawi, *Ta'rif al-khalaf*, vol. 2, p. 147.

[32] He helped Capt. Seignette translate the *Mukhtasar* of Sidi Khalil. On medals, see F. Rens.: Chaib Ben Abdallah ABOU-BEKR, in Dossier C.P.E. Tlemcen, in 16 H 29.

[33] 'Abd al-Salam later became a professor at the médersa of Tlemcen. He produced numerous other minor works on law, and a small dictionary.

[34] 'Abd al-Salam Ben Sha'ib Abu Bakr, "De l'assimilation des indigènes musulmans de l'Algérie," in *Congrès International de Sociologie Coloniale*, 1900, p. 147.

doubling their efforts to raise educational standards. Only through such an effort, they felt, could they make their civilization something of which the Europeans would have to take serious account.

It is perhaps significant that the rather pathetic appeal for European understanding came from Tlemcen, where a sharifian elite sought to cling to their privileges. With their cultural polish and their aristocratic demeanor, the Tlemceni shurfa suited very well both the orientalist's and the colonialist's notion of what Islam should be.

That the milieu of Tlemcen was one that stifled intellectual vitality and change seems to be confirmed by the career of 'Abd al-Qadir al-Majjawi, who played a major role in the late nineteenth-century revival. He was of Tlemceni origin, and in fact his father had been Sha'ib's father's teacher.[35] However, it was in the more open society of the Constantinois where he was able to launch his enterprise in cultural revival. (See Chapter 8.)

7.4 Types of Itinerant Magistrate

In pursuing the sources of geographic mobility and of success in judicial careers, one must move beyond the provincial level and seek out local concentrations of successful and mobile magistrates. No sophisticated contortions of statistical analysis are necessary to find the largest concentrations. It suffices to look at a sample—the 62 qadis in office in 1892 will do as well as any other. In this group, of those serving outside their native subdivisions, 6 were from the subdivision of Constantine, 6 from Sétif, 3 from Miliana, 3 from Tlemcen, and one each from Sidi Bel Abbès, Oran, Orléansville, Bône, and Mascara.

The best recruitment ground lay in a long rectangular zone enclosed very roughly by a line running just south of the cities of Constantine and Sétif, and from those cities up to the coast; in other words, the city of Constantine and its environs, and the Petite Kabylie. Adding to this zone the cities of Miliana and Tlemcen (each of which produced 2 of the 1892 itinerant qadis), one has accounted for two-thirds of the mobile group. The remainder can be accounted for largely by special circumstances which led a particular family or group into heavy involvement in the Muslim judicial system.

The most striking difference among these centers of concentration is that while in the important zone of recruitment—Constantine and the Petite Kabylie[36]—judicial success tended to be generalized, spread

[35] The Gouvions, *Kitab al-aâyane*, section on Oran, p. 8.

[36] For data on the itinerant magistrates of these regions, see Appendix 1 of this chapter.

among a large numer of localities, tribes, and families within the region, the other cases tended to involve concentrations in the hands of one or a very few families. Further, those in the latter cases would seldom leave home permanently or for very long stretches of time, as was quite common among the Eastern itinerant magistrates.

However, there is one case which violates this generalization: the Bu Talib family, cousins of the Amir 'Abd al-Qadir, seem at first glance to fit the definition of the second group. They came from outside the prime zone of recruitment, and concentrated within their family quite a large number of judicial posts. Yet they were permanent migrants par excellence. This will require special explanation.

The isolated concentrations of success and mobility seem to represent an essentially conservative phenomenon which lent itself to the strengthening of individual families whose ambitions and outlook were largely local. Such families were like a tree whose branches might extend in different directions, but still lead back to the same clearly identifiable trunk.

The "itinerant" type were instead rather like a vine which seemed able to spread anywhere, and sink roots and draw sustenance from a variety of soils. This group formed complex networks and could thus be difficult to control. They were more likely to form a wide outlook than were the "isolated case" type. And they seem to have been able to develop a sense of themselves as an interest group of provincial dimension. They were not by any means fire-breathing revolutionaries. Their political ventures (see Chapter 8) will strike one as timid, awkward. Nevertheless, they represent an important current of change within Algerian society.

Two Isolated Cases: the Judicial Families of Miliana and the Bel 'Arbis of Zawiya Kabaltia

The most notable single concentration of successful magistrates lay in the town of Miliana, located in the mountains between Algiers and the Chélif Valley. Miliana was famous for the annual pilgrimage to the tomb of her patron saint, Sidi Ahmad Ben Yusuf. The major judicial families of Miliana were descended from this saint and from Sidi al-Nasir Ben Mansur. Both of these saints were originally from the Mascara region, and their families seem to have established themselves in Miliana early in the Turkish period, which suggests that they may have benefited from beylik patronage. These families were the Bel Antri and the Buzar (or Bu Izar), descendants of Sidi Ahmad

Ben Yusuf,[37] and the Ben al-Hajj Hamou, descendants of Sidi al-Nasir.[38] There were also a number of less prominent families: the Buzian al-Sanusi, the Ben 'Aissa Bel 'Arbi, and the Ben 'Arbia. With the major maraboutic families, they effectively dominated justice in the region of Miliana.

The consistent image of these men which can be gleaned from archival sources is that they were well educated and well behaved, and that they had a reputation as loyal, intelligent, even-handed magistrates.[39] The six Miliana judicial families produced 25 magistrates between 1856 and 1892, and among them they logged a good 330 years of service, not counting years on the Conseil Supérieur de Droit and the majlis. An indication of their career patterns can be seen in toting up the number of years logged outside the subdivision of Miliana—this amounted to only 37 years, or about 10 percent of the total years logged. (If one were to push the study to 1900 or beyond, this percentage would probably rise significantly.) They stuck close to home as much as possible, and dominated the mahkamas of the cercles of Miliana and Teniet el-Had. Their presence was less strongly felt in the cercle of Cherchell, probably because there was stronger competition in that area, which in certain ways replicated the conditions found in the Petite Kabylie.

Why were they so prolific? Conceivably it was simply a matter of success leading to success. But the following seems a plausible hypothesis. First, having a strong religious identity, they felt compelled to pursue religious occupations rather than venturing into commerce, agriculture, the military, or politics, as one finds in the more secular 'ulama families of Constantine and Algiers, such as the Ben Badis, the Ben Jallul, and the Ben Brihmat. Second, Miliana was rather isolated, being in a mountainous zone, and economically stagnant in comparison to nearby colonial towns such as Duperré, Affreville, and Orléansville.[40] Given this situation, it may well have been that judicial careers proved the best way for these families to survive and adapt.

As to why they wanted to stay close to Miliana, a simple explanation suffices. Miliana is in a beautiful location, well watered and

[37] The Gouvions, *Kitab al-aâyane*, section on Oran, pp. 29-31.

[38] *Ibid.*, pp. 92-97.

[39] On image, see Subdiv./Mil. to Div./Alg., 14 June 1858 (Buzian al-Sanusi helps to verify registers, is poor, loyal, and hard working); 8 May 1861, in 60 II 24 (on Muhammad Ben Ahmad Buzar); 14 December 1858, in 60 II 22 (on Muhammad Bel 'Arbia); and especially the affair of the qadi of Miliana, discussed below.

[40] M. A. Piquet, "Une siècle de l'évolution de la communauté israelite à Miliana," *La France Méditerranéenne et Africaine*, 1 (1938), pp. 44-63.

well shaded; it is one of the most popular summer resorts in Algeria. These men may well have seen it as a little corner of Andalusia, a small piece of a better world which had somehow survived the afflictions of history.

It is fitting that it was the qadi of Miliana, 'Abd al-Qadir Ben 'Abd al-Mumin Ben 'Aissa Bel 'Arbi, who became a cause célèbre in the 1890s, when the colon mayor of the town subjected him to virtual inquisition. He was finally absolved of all wrong-doing before the French Parliament, and cast as a hero in opposition to the scurrilous, underhanded small-town colon politician.

Ageron has presented the basic details of this case.[41] What I have to add is that Ben 'Abd al-Mumin was probably able to gain European support because of the long-standing and solid reputation of Miliani magistrates. Also, the mayor's attack (seconded by some prominent rural Muslims) might well be seen as an attempt to break the long-standing hegemony of these families over the mahkamas of the region.

A second, more limited, but in many ways more intriguing, case of local judicial proliferation is that of the Bel 'Arbi family of the Zawiya Kabaltia near Guelma, in the East Constantinois. This zawiya had been the center of a minor insurrection in 1852. That uprising was easily put down. As a report put it rather casually: "Some of the rebels were beheaded and the others were able to flee and hide."[42]

At that time the zawiya lands were sequestered. Twelve years later, in a show of clemency, the sequester was lifted, and those who had fled were allowed to return. The invitation was taken up, except by the principal zawiya families, among them the Bel 'Arbi, who remained dispersed throughout the subdivision, most of them working as teachers.

Only in 1870 did the Bel 'Arbis initiate their move to return to the zawiya, which they did with considerable éclat. They claimed to be the rightful proprietors of the old zawiya property, including a mill, which had been distributed to the returned tribesmen in 1864. A qadi found in their favor. Their opponents appealed the case to the Tribunal of Constantine, but there, too, the Bel 'Arbis prevailed.[43]

Within ten years, Tahar Bel 'Arbi assumed the qadiship of the local mahkama, and the family was taking on the appearance of a judicial dynasty. Some members went as far afield as the Sahara and the Aurès to follow judicial careers. The Bel 'Arabis come across as quite

[41] See Ageron, *Les Algériens*, pp. 443-444.

[42] Subdiv./Bône to Div./Cst., 6 September 1873.

[43] Cercle/Guelma to Subdiv./Bône, 5 March 1870.

deliberate strategists. They developed marriage links with prominent influential figures such as Ahmad Ben Merad, qadi of the Edough, and qaid Bu-l-Aris of La Calle.[44] Their legal coup in taking over the zawiya property—which had probably been habus, destined for education and charity—seems to have been well planned and well executed.

Younger brothers and sons were carefully directed in their careers. While 'Abd al-Qadir received the thankless task of rendering justice in the burning sands of the Souf, his older brothers, Tahar and Ahmad, saved up to send the youngest of the brothers to the École Polytechnique.[45] When Tayib's son Lakhdar became an 'adil in Collo in 1889, his father sent him money every month to make up for the scantiness of his earnings during his apprenticeship.

The Bel 'Arbis can be understood as a family that moved quite high quite rapidly. Arriviste one might call them, though they "arrived" thanks to traditional capital, their education, and the titles to the zawiya property they had taken with them in 1852. Consistent with this image, Tahar, the grand strategist of the family, apparently quite fancied himself a member of the provincial Conseil Général,[46] an idea which may have been inspired by seeing another upwardly mobile magistrate, Salah Ben Bu Shanak, being accorded this honor. (See Chapter 8.)

In comparing the ends to which the Bel 'Arbis and the Miliana families used judicial careers, one can say that the former took them as a vehicle to wealth and power, while for the latter they were more a means of maintaining an established position. It was unbounded ambition which sent one Bel 'Arbi to sweat in the Souf while another headed for Paris to study in the most prestigious of the French grandes écoles. It was refinement and love of creature comforts which kept the Milianis away from both such extremes.

Mascaran Exiles in the Constantinois: the Bu Talib Family

By far the most prolific and peripatetic of the colonial Muslim magistrates were the Bu Talibs, cousins of the Amir 'Abd al-Qadir. The first mention of the Bu Talibs in a French source comes in the notes made by the then Captain Daumas, ambassador to Mascara in the

[44] On Ahmad's link with Ben Merad, see Subdiv./Bône to Div./Cst., 31 August 1870, in 20 KK 45; on Tahar's with Bu-l-Aris, Div./Cst. to GGA, 26 November 1880, in 1 KK 60.

[45] Div./Cst. to GGA, 29 March 1866, in 1 KK 66.

[46] Notes on personnel of Muslim justice, Second Semester, 1885, Cercle/Souk. A., in 24 KK 45.

late 1830s. At this time, the Bu Talibs—father 'Ali, and brothers Mulud, Ahmad, and 'Abd al-Qadir—were all noted as having rather tense relations with the Amir.[47]

In 1840, Ahmad and Milud withdrew to Fez, according to Léon Roches because they "had come to see the impossibility of the fight against the French." They may, of course, have gone there as agents of the Amir, and they may have continued to be after leaving Fez, but there is no evidence of this.

On 1 October 1847, Ahmad presented himself at the French consulate in Tangier, claiming that he feared that the Amir would soon attack Fez at the head of the rebellious tribes of eastern Morocco.[48] These fears, however, proved unfounded, as 'Abd al-Qadir's movement crumbled, and he shortly surrendered to the French.

A year after his arrival in Tangier, Ahmad was, according to Roches, "living close to misery." He wrote a letter to an old battlefield rival, Lamoricière, now Minister of War for the Second Republic, pleading with him for permission to re-enter Algeria and live peacefully in Mascara.[49] The request was not granted.

In 1850 his brother Milud joined him in Tangier, and they apparently both lived off of meager handouts from the consulate. Only in 1854 did a break come. Ahmad had heard that the Government-General was looking for qadis, and he asked the Consul to make an inquiry for him. The latter gladly obliged, writing to Algiers: "I will be very happy for my part if you could accede to this request, for the presence of Sid Ahmad Bu Talib in Tangier is for me a charge of which I would gladly be relieved."[50]

Some three months after this letter was sent, Ahmad Bu Talib rolled into Sétif in a stagecoach, complete with his family of fifteen. His career began on a note familiar to many an Algerian fonctionnaire: there was an acute housing shortage in this rough new colonial town. He was not "used to living in a tent," and thus the only quarters he could find at first were a room used to lodge local qaids on their visits to town.[51] The following year Milud became qadi of Bordj Bou Arreridj, a town to the southwest of Sétif.

The Bu Talibs appointment as qadis in this region raises two particular questions: why were they appointed in this region, rather than in their native Mascara? And why did they accept this exile within Algeria rather than going to join the Amir in Damascus?

[47] Daumas, *Correspondance*, p. 642.

[48] Consul/Tanger (Léon Roches) to Min. Af. Et., 28 July 1852, in 7 H 22.

[49] Ahmad Bu Talib to Min. Guerre, 1 October 1848, in 1 H 11.

[50] Consul/Tanger to GGA, 2 August 1854, in 7 H 22.

[51] Div./Cst. to GGA, 2 August 1854, in Archives Min. Guerre (Vincennes), H 280.

The French choice to keep the Bu Talibs away from Mascara was based on the understandable but somewhat exaggerated assumption that they were dangerous. The exaggeration of the danger was aided, if not actually caused, by a desire to rationalize the sequester of the Bu Talibs' rich agricultural holdings in the Mascara region.[52] They were appointed to the *Sétif* region largely on the hope that they might serve as a counterbalance to the power of two local potentates, the Bash-Agha Muqrani, who controlled the region of Bordj Bou Arreridj, and Ben 'Ali Sharif, whose fief was in the mountains to the northwest of Sétif.

As to why the Bu Talibs chose this internal exile over migration to Damascus, two answers are possible: that the heritage of hostility with the Amir prevented it, or that the Amir simply lacked the resources to accommodate them at that time, since he already had a very large entourage to take care of there.[53]

But the key to understanding this family lies in examining the career patterns of different branches of the Amir's family, looking especially at the length of their judicial careers and dates of going to Damascus.[54] One sees that the families of Ahmad and Milud, with some exceptions for individual members, evidently found the Constantinois little to their liking and departed at an early date to Damascus.[55] Ahmad went there in 1863, and Milud two years later. Of their sons, only 'Abdallah Ben Ahmad remained in Algeria to pursue a judicial career.

The ones who endured were three sons and a grandson of 'Abd al-Qadir Bu Talib. Why this branch? Here Daumas' notes of 1839 are quite intriguing. 'Abd al-Qadir Bu Talib, he wrote, "was the sworn enemy of the Amir," and a chief of the Darqawa brotherhood, "who held their meetings in the mountains of the Ouanzeros (Ouarsenis) to swear the death of tyrants. . . . He never appears in Mascara."[56]

Whatever personal jealousies and quarrels may have existed between Ahmad and Milud and the Amir seem to have been patched

[52] For instance, Div./Oran to GGA, 9 August 1853, in 1 JJ 10.

[53] Consul/Damas to Min. Af. Et., 24 April 1857, in Archives Min. Af. Et., Damas IV; see also General Daumas, Notes on the Amir 'Abd al-Qadir for the Minister of War, September 1855, in 1 E 237.

[54] For data on the Bu Talibs' careers, see Biographical Notes.

[55] Hopes of returning to Mascara probably were given up after Milud's visit there in 1863 resulted in accusations of political intrigue. See Div./Cst. to GGA, 26 June 1863, in 1 KK 289. Milud may later have gone from Damascus to Tunis. There is a letter of introduction for him from the Amir to Mustafa Khaznadar, Mid Dhu al-Hija 1281/April-May 1865, in Archives Nationales Tunisiennes, Carton 78, Dossier 929.

[56] Daumas, *Correspondance*, p. 642.

up by the mid-1860s. (And the Amir's finances had improved as well.) But in the case of the two 'Abd al-Qadirs, the differences were profound, and came to have an ideological and political expression.

The Amir was a muqaddam of the rather elitist Qadiriyya brotherhood; and the main foundation of his political power lay in the sharifian aristocracy of the Mascara region. 'Abd al-Qadir Bu Talib was a partisan of the populist Darqawa. They were the Amir's most serious rivals in Western Algeria. Rather than cooperating with him, they had launched their own rebellion in 1845 under the leadership of Bu Ma'za. The partisans of this brotherhood were generally recruited from the poor ra'ya tribes of the mountainous regions, the Ouarsenis and the Dahra. 'Abd al-Qadir Bu Talib's joining the Darqawa implied his turning his back on his family and class.

As a result of this enmity, it may have been impossible for 'Abd al-Qadir Bu Talib's sons to follow their uncles to Damascus. At the same time they could not go back to live in Mascara. With only their education and their name for assets, they adapted out of necessity to the life of the wandering qadi.

Indeed the adaptation was so successful that they seem to have broken their ties with Mascara, and to have adopted Sétif as a home. When Ahmad al-Mujahid died there in 1308/1890, he was buried near the tomb of a local saint, Sidi Sa'id al-Zawawi.[57] This suggests that he may have developed ties with the Hansaliyya brotherhood, and this was indeed logical, for both the Hansaliyya and the Darqawa were offshoots of the Shadhiliyya. This suspicion is lent further credence by the fact that the only Hansaliyya outside the province of Constantine (according to an 1898 survey) were to be found in the vicinity of Mascara.[58]

Another interesting indicator of Ahmad al-Mujahid's character (and by inference the character of his family) is his tie with 'Abd al-Qadir al-Majjawi, a fellow Westerner in internal exile, and leading figure in the "local islah." Hafnawi tells us that the two carried on an exchange of ideas, and that they were also related by marriage.

[57] Hafnawi, *Ta'rif al-khalaf*, vol. 2, p. 86.

[58] On the Hansaliyya, see Depont and Coppolani, *Les confréries*, pp. 492-495. The Hansaliyya were especially strong in the Commune Mixte of Eulmas (Sétif), where Ahmad al-Khadir had a house. See Subdiv./Set. to Div./Cst., 3 February 1862., in 40 KK 13. The al-Zawawi family were hereditary chiefs of the Hansaliyya. Hafnawi's comments on Hajj Ahmad al-Mubarik (*Ta'rif al-khalaf*, vol. 2, pp. 72-73) suggest that he helped to reform the brotherhood, purifying it of corrupt, heterodox practices. It would be interesting to look for links between the Hansaliyya, commerce, and the "local islah" of the Constantinois.

Unlike others of the Bu Talib family, this branch proved persistent troublemakers. They were a stubborn and independent lot who stood up to qaids and commandants alike. In fact, they managed to drive a commandant of Sétif to the point of despair, urging tribesmen to migrate to civil territory in order to avoid paying the impôt de guerre for their role in the 1871 rebellion. This activity went unpunished, in part because their relationship to the Amir afforded them protection, but more importantly because they were protected by local civil authorities.[59] It appears that they were not afforded the same degree of protection by the Amir as was, for instance, Ahmad's son 'Abdallah, who was revoked but called back to service after intervention of the Amir. No such favor was shown Muhammad or Mustafa Ben 'Abd al-Qadir when they were revoked.

Curiously, the Ben 'Abd al-Qadir Bu Talibs were suspected both of collaboration with secret revolutionary schemes of the Amir, and of collaborating with various European financial enterprises, such as the Compagnie Génévoise, a land company in the Sétif region, and the Comptoir Générale Franco-Arabe, a bizarre land speculation scheme launched by some Oranais colons together with the truly peculiar 'Ali Ben Ahmad Bu Talib.[60]

The Commandant of Sétif went so far as to call the Ben 'Abd al-Qadir Bu Talibs "*gros mangeurs*," inferring that they ruthlessly exploited their judicial clients. "Gros mangeurs" though they may have been, they managed to wind up quite poor. When Ahmad al-Khadir died in Tébessa in 1898, after forty two years of judicial service, he left his wife alone and destitute. She and the widow of one of Muhammad Ben Ahmad's sons by his first wife (who also seem to have been distant from the Amir) had to depend for their support on another relative, who was a bash 'adil near Sétif.[61]

These diverse pieces of information lead to a number of observations. The first regards the abundance of the Amir's relatives in the judiciary (besides the Bu Talibs and the Ben Mukhtars there were a

[59] Subdiv./Set to Div./Cst., 3 July 1873, in 40 KK 28.

[60] On political aspects, see Subdiv./Set. to Div./Cst., 15 November 1873, in 40 KK 28 (on Mustafa Ben Ahmad Ben 'Adb al-Qadır); and Subdiv./Cst. to Div./Cst., 3 July 1860, in 30 KK 11, which links the appearance of Muhammad Ben 'Abd al-Qadır with increased interest in the Amir in the region. On the Compagnie Génèvoise, see Subdiv./Set. to Div./Cst., 3 July 1873. The suggestion is that they helped to recruit workers and tenants. On the Comptoir affair, see Pref./Oran to GGA, 28 February 1878, in 7 H 22.

[61] See Proc. Gen./Alg. to GGA, 9 August 1879, in 7 H 22.

large number of distant relatives in Oranais mahkamas), a phenomenon which led some colonial officials to visions of conspiracy, but which was also depicted as a clever political strategy to keep potentially dangerous men under control.[62] The abundance of the Amir's magistrate relatives can lead the historian of Algeria to a sort of genealogical fallacy, to looking for some special significance in these kinship ties when they are in fact of secondary importance.

The Amir was related to a large number of the maraboutic families of the Oranais; and the Amir's fame and influence helped distant cousins to remember otherwise forgotten links. Families like the Ben Mukhtar and the Bel Mustafa no doubt had some edge in the competition for jobs. But so for that matter did relatives of other influential figures such as Muhammad Ben Rahhal and the Agha Sidi Larribi. Such families are best understood as members of a local sharifian aristocracy: we should not let the "trees" of prestigious agnatic ties distract us from the "forest" of class ties.

The Bu Talibs are a special case, since they were close relatives of the Amir (father's brothers' sons) and they were initially taken on as qadis thanks to that relationship. But once they were established as qadis other factors, namely the particular character of individual branches of the Bu Talib family, came into play. Only the Ben 'Abd al-Qadir Bu Talibs endured as qadis.

This leads to the second major point. The unusual characteristics of this family, as shown in their judicial careers, cannot simply be explained by kinship with the Amir. A more cogent explanation of their character lies in a combination of the influence of their adoptive milieu, Sétif, and in the family's political views and religious affiliations. Itinerant judicial careers were fairly common in the Sétif region, thus the Ben 'Abd al-Qadir Bu Talibs may, to some extent, simply have been taking up local ways. It is more likely, however, that their motives were personal ones, and that the Constantinois provided a favorable milieu for their endeavors.

On the one hand, their father's Darqawi allegiance indicates a certain radical activist streak. On the other, their link with Majjawi shows that they were in touch with the major current of Islamic revival in Algeria at the time. The most convincing hypothesis is that they followed their judicial careers to all corners of the country out

[62] Pref./Cst. to GGA, 24 June 1899; and Maire/El Arrouch to Sous-Pref./Cst., 28 May 1899, in 7 H 22.

of a sense of mission, to spread, albeit quietly and discretely, their political and religious message.

They would, I think, have argued that the most effective way to oppose colonialism and, in modern terms, work to preserve the "Algerian identity" was to work from within, even if this meant accepting government employment. This certainly seems to have been the view of Majjawi,[63] who was in all respects quite similar to them, and indeed, through marriage, part of the family.

As to what sort of ties they maintained with the Amir, if any, that is a question which, like many others, is shrouded in the enigmatic personality of the Amir in exile. There were in fact regular envoys between Algeria and Damascus, and at least one of them made Majjawi's home in Constantine a stopping point.[64]

But unless complete evidence is uncovered as to the real political strategy of the Amir, one has to go by judgments of character. The Amir was in many ways a kindred soul of Tahar Bel 'Arbi: he was driven by ambition to the point where he surrendered political and intellectual consistency. He was at once a freemason and a sufi; one was just as likely to find his progeny at Lycée Louis le Grand or St. Cyr as at al-Azhar or in the main Qadiri lodge at Baghdad. The Amir played all the angles. Indeed, one is sorely tempted to say that he had almost a compulsion for fomenting plots that he would later disown.

The Ben 'Abd al-Qadir Bu Talibs had a different vision and strategy which were less likely to make them famous, wealthy or indispensable, but, given the Algerian situation in the late nineteenth century, were more realistic and more effective. The vision which had taken their father to the desolate Ouarsenis to "swear the death of tyrants" also took the aging Ahmad al-Khadir to serve as qadi of Tébessa, in a beautiful but also poor and desolate region. And, though poor, it was, according to Malek Bennabi (who spent his childhood there in the decade following Ahmad al-Khadir's death), a center of the local islah.[65] I am not suggesting that Ahmad al-Khadir was in any sense the "cause" of this ferment in Tébessa, but rather that he may well have contributed to it, and that the existence of that fer-

[63] See Dabbuz, *Nahda haditha*, p. 98. He claims that Majjawi accepted a post at the médersa because the French threatened to close his own independent school if he did not accept the offer.

[64] Pref./Oran to GGA, 2 May 1878, in 7 H 22. The voyager was Mustafa Ben Darwish, who travelled yearly from Fez to Damascus.

[65] See Bennabi's *Mémoires d'un témoin du siècle.*

ment made such a small remote town bearable and even attractive to him.

Migrants from the Petite Kabylie: the Beni Ahmad

The basic factors involved in the migration of magistrates from the Petite Kabylie have been discussed in a previous section. What remains to be discussed is the resettlement of emigrants in other regions, and some of the political aspects of the phenomenon. Both are captured in a note hastily scrawled by the Sub-Prefect of Guelma, in 1877, in a report on local Muslim notables. He wrote

> The Beni Muzzeline are a fraction originally from Djidjelli, whose specialty is to furnish magistrates to different mahkamas of the province. Nearly all the members of the tribe are tulba. When a Beni Muzzeline is placed in a judicial post, he has no rest until those who surround him are from the same country as he. . . . Soon it will not be rare to see mahkamas composed entirely of Beni Muzzeline. Wherever they install themselves, they take possession of some land. This possession is, in principle, provisional. . . , but perforce it tends to become definitive. Thus while they remain Beni Muzzeline, they acquire a certain authority and influence in the area where they are implanted. They are a fraction to survey with great care, for they are coming to have ramifications everywhere.[66]

By Beni Muzzeline, he was evidently referring to the Beni Ahmad, who were a part of a conglomerate tribe of that name. This fraction came from the Djidjelli region, as did a number of other groups around Guelma, such as the Beni Foughal. They had arrived in the Guelma region over the last century, and were still coming. Djidjellians seeking work and land came to Guelma, while those in Guelma often went back to the Petite Kabylie to study in a zawiya.[67]

[66] Sub. Pref./Glm., Report on Muslim notables of the Guelma region, 15 April 1877, in 6 H 33.

[67] On origins, see Senatus Consulte: Beni Muzzeline (1868), in 22 KK 63. For a case of migration of Beni Ahmad, driven out of Djidjelli region by colonization, see Cercle/Glm. to Sudiv./Bône, 21 January 1873, in 22 KK 21. In the territory of the Guelma Beni Foughal, there was a small zawiya (Sidi Sa'adi al-Hambli), with strong links to zawiyas in the Petite Kabylie. When they needed a teacher in Guelma, they sent back West. See Cercle/Glm. to Subdiv./Bône, 29 August 1866, and 17 December 1869, in 22 KK 17. See also F. Rens.: Mabrouk Ben Tahar Ben Saadan, Dossier C. M. Oued Cherf (1898), in 16 H 23.

As to whether the Beni Ahmad were indeed as numerous in the judiciary as the Sub-Prefect intimated, I am inclined to doubt. A definitive judgment on the question would require more extensive data on the origins of Constantinois magistrates than are available.[68]

Whatever the case, two important points remain: there was ongoing migration from the Petite Kabylie, especially from the Guelma region, and this emigrant group included such prominent local figures as Muhammad Ben Ahmad al-Fasi, qadi of Bône; and this phenomenon was evidently disturbing to the man in charge of keeping things under control in Guelma.[69]

If the Sub-Prefect had a grudge against the Beni Ahmad, it was probably due to the trouble they had been causing in recent years. They had been seeking to make themselves an independent fraction with their own qaid. Their various maneuvers in relation to this question led to some arrests, and in turn to a demonstration before the casbah of Guelma during disciplinary hearings for those arrested. In the course of the demonstration, there were scuffles between the Beni Ahmad and some spahis and Bureau Arabe officers, after which the Beni Ahmad hired a lawyer to press charges of "police brutality."[70]

The Sub-Prefect seems to have sensed a connection between the important role of this group in the magistrature and their assertiveness in local politics. The key lies in understanding this group's peculiar combination of advantages and disadvantages. They were, relatively speaking, latecomers to the Guelma region, and thus had little power or influence in the area. They had been arbitrarily lumped with three other fractions of diverse origin into a single tribal unit, and their shaikh, or fraction head, was an outsider.

Yet they were well educated and had relatives in important positions, in which they were likely to have gained a knowledge of the workings of French law and administration, and to have made connections with other important individuals. The combination could prove volatile as the group sought to call upon the influence and real

[68] More detailed data are currently available on magistrates in the Oranais. Personnel notes did include information on fraction and tribe of origin, so that if new material comes to light in either Aix or Algiers, a more thorough study could be made of the importance of kinship ties in judicial careers.

[69] Ahmad Ben al-Fasi was a qadi in the Djidjelli region until 1862. A man named Muhammad Ben Si Ahmad was qadi of the same mahkama in 1865-1866, and could well be the same person who was later qadi of Bône. On an incident involving Ahmad, see Cercle/Djidjelli to Subdiv./Cst., 2 April 1860, in 33 KK 15.

[70] Cercle Glm. to Subdiv./Bône, 11 February 1875, in 22 KK 21.

or apparent political sophistication of their magistrate cousins to help to improve their situation locally.

What I am suggesting is that a Beni Ahmad magistrate may have helped to stir the ambitions of the group for political autonomy and guided them in the strategy of hiring a lawyer. Further, there is reason to suspect, on the basis of other examples,[71] and the somewhat elliptical wording of the Sub-Prefect's report, that the earnings of magistrate relatives were helping the Beni Ahmad to buy up land. In short, they were submerged, but, unlike many other groups in similar situations, they had the means to assert themselves, thanks to their particular, specialized form of migrant labor.

The situation can be contrasted to that of the Miliani magistrates or of the Bel 'Arbis. In these cases, judicial families were tied to a traditional base (in the sense of a "family tradition"): in the former case, a town which served as the center of a pilgrimage to the tomb of a forebear; in the latter, the family, though temporarily cut off after the 1852 rebellion, had recovered the zawiya and the property attached to it, and made it a center of their operations.

Similar situations pertained in the case of most important colonial Muslim judicial families: they were fairly well-to-do, and well established in a particular place. In some cases, they were the most prominent family of the region—one thinks here of the Ben Rahhol of Nedroma and the Ben Sayah of Orléansville.

But in the case of itinerant magistrates of the Constantinois, one finds instances of men cut off partly or entirely from whatever traditional base they may have had, and thus from such traditional trappings as the family zawiya or the ancestor's tomb, with all the attendant feasts, and collections of alms, and annual pilgrimages. And thus they lost, or were in the process of losing, the heterodox and (by the 1880s) essentially conservative facet of the maraboutic identity—that of local holy men—while preserving other facets, namely, those of scholar and judge.

Rather than clinging to the family habus property, they built up their own holdings, or in some cases remained poor. Those who bought up land on the proceeds—licit or not—of judicial positions could easily inspire resentment and jealousy. But their titles, duly registered and notarized, were not, like habus, vulnerable to the whims of colonial jurisprudence and the favorable disposition of the Gov-

[71] See, for example, F. Rens.: Ahmad Ben Yusuf Ben 'Abd al-Mumin, in Dossier C. M. Fedj Mezala (1898), in 16 H 6.

ernment-General. With legally defensible titles, they did not have to be as guarded in their political behavior as habus beneficiaries.

If these men had a focus, it was the city of Constantine, where most if not all of them had studied, and where many of them had important social and economic ties. And to speak of Constantine in the 1870s and 1880s is to speak of the first stirrings of political activism and cultural revival. Among those receptive to the new messages and well placed for transmitting it were the "itinerant magistrates" of the province, among whom was Muhammad Ben Ahmad al-Fasi of the Beni Ahmad.

7.5 Conclusion

The results of recruitment under the 1866 decree are in a sense ironic. While this new system was largely the conception of al-Makki Ben Badis, the group he represented—the urban 'ulama—did not provide any of the more marked "success stories" of the Muslim judicial system in the 1870s and 1880s.

One may venture a number of reasons for this. First, as I have suggested, urban dwellers were likely to learn French, and thus to have wide career options. Second, they were often ill suited to accept the hardships which might accompany especially the early years of a judicial career. Often urbanites would take the exam and simply wait for a suitable post to open up in the city or its vicinity.

Third, the highly influential Ben Badis had himself come, by the 1870s, to a marked shift in his views, after a series of frustrating experiences with "working inside the system." To begin with, even the "arabophile" Imperial regime had failed to grant a key demand of 1866; the recreation of the sovereign majlis. The new civil regime seemed to have no use for such an articulate spokesman. In 1871 he had worked on a project to "harmonize" French and Islamic penal law, the results of which were dismissed without serious consideration.[72] A concept very different from this was rapidly finding favor among the colons: that of "native law," which both deprived the Muslims of their own law and refused to afford them the protection

[72] See report of the Muslim members of the subcommittee on penal law, September 1871. Ben Badis' nomination to the committee is discussed in GGA to al-Makki Ben Badis, 4 July 1871, in 12 H 1. In an 1875 brochure, *Exposé des lois repressives s'applicant aux voleurs de la campagne en Algérie*, Ben Badis develops the ideas he set forth in the penal law report. In effect, he attempts to create an Islamic alternative to the Code de l'Indigénat. It is characteristic of his thinking that he would countenance repressive laws in turn for recognition of Algeria's religious identity.

of French law. It is in this period that al-Makki turned increasingly to politics and pamphleteering, and guided his son Hamida along the same path. With an influential man like al-Makki taking a dim view of careers in Muslim justice, it is safe to assume that many others from this city did the same.[73]

Those who most conspicuously succeeded were from maraboutic families. As to *which* of them succeeded, this depended in large part on personalities and on local circumstances. However, it is possible to generalize to the extent of saying that those marabouts most exposed to urban values were the ones most likely to succeed in the late nineteenth century. It was these men who were well educated and sophisticated enough to cope with the changing situation, and yet, having a religious coloring to their identity, gravitated to this more or less traditional and arguably religious career.

This category of urban-oriented marabout includes, on one hand, the Miliana families, who lived in a town; the Awlad Sidi Daho of Mascara, who lived very near one; and the fuqaha of the Petite Kabylie, who felt a strong attraction for the city of Constantine. Those regions which had been less exposed to urban influence—the Aurès, the High Plains in the regions of Bordj Bou Arreridj, Aumale, Médéa, and the South Oranais, and the Chélif Valley—produced no or few prolific judicial families in this period. And, above all, they seldom exported magistrates and often imported them.

Among the successful magistrates of this period, one finds many names prominent in Algerian politics and letters in the twentieth century: Ben Rahhal of Nédroma, Ben Sayah of Orléansville, Bel Antri, Buzar and Ben al-Hajj Hamou of Miliana, and Ben al-Qadi of Batna. It was the continued flourishing of these families that led one colonial "native affairs" expert, Augustin Berque, to hypothesize a "rise" of the maraboutic aristocracy in the late nineteenth century, concurrent with a decline of the military aristocracy.[74]

With modification, this hypothesis can be accepted. It was not so much the "rise" of a class as the consolidation of wealth, power, and jobs in the hands of specific maraboutic families, while other families withdrew to obscurity.

A striking example of the latter case is the Bel Haoua family of the Mostaganem region, who in the 1860s dominated the mahkamas there.

[73] One of al-Makki's sons, Sharif, was long a magistrate. But it was really Hamida who stepped into his father's political shoes. 'Abd al-Hamid Ben Badis' education and career reflect the family's disdain for both the médersa and the judicial system.

[74] Augustin Berque, "Esquisse d'une histoire de la seigneurie algérienne," *Revue de la Méditerranée*, 7 (1949), pp. 18-34, and 168-180.

Through a string of bad luck and financial reverses, and perhaps a failure to keep up with rising educational standards, they had nearly vanished from the judicial system by the late 1880s.[75]

It is important to understand that what made possible the "rise" of these judicial notables was the fact that, because of their judicial specialization, they had been able to find a niche in the colonial system of the late nineteenth century. Such a niche was not available to the military aristocracy of the Tell, whose positions either disappeared or became much less important and prestigious. In contrast, the office of qadi became more and more prestigious due to the centralization of the Muslim judicial system from 1867 onward. A qadi in 1856 was lucky to have 10,000 justiciables. In 1892 a qadi could have 100,000 justiciables. Such a man had to be reckoned with.[76]

In the early 1890s, when the colons' "war against the qadis" was brought to an end and more tolerant policies came under discussion, it was men such as Mhammed Ben Rahhal and Muhammad Ben al-Hajj Hamou who came forward with proposals for reform.[77] And it was the qadi of Miliana who stood as a symbol of the "martyr qadi."

If this new elite of judicial marabouts seemed to be the major beneficiaries of the new moderate policy, they were not to any significant extent responsible for that policy's triumph. The solicitousness of the liberal senators for Algerian qadis was rather a response to increasing political and cultural ferment in the Constantinois.

This ferment was to a large extent the combined product of the three groups involved in colonial Muslim judicial affairs who are, to my mind, the most interesting, vital, and important: the 'ulama of Constantine, and in particular al-Makki Ben Badis; the itinerant magistrates from the Petite Kabylie and the environs of Constantine, such as Ben al-Muhub, Bu Shanak, and Ben al-Fasi; and the Oranais exiles, al-Majjawi and the Ben 'Abd al-Qadir Bu Talibs. What follows is the story of that ferment.

[75] See F. Rens.: Bel Haoua, in Dossier C. M. Hillil (1898), in 16 H 18.

[76] One of the most striking examples of the qadi's new power is Ben Sayah of Orléansville. He came from a wealthy family whose prominence, both locally and nationally, would continue into the twentieth century. Their precolonial land acquisitions are listed in a document in the register of the Bureau Arabe qadi of Orléansville, recorded in Jumada II 1271/ January-February 1857,72 II 25. His earnings as a qadi were quite impressive. In 1883 he made some 10,800 francs in honoraries alone.

[77] For details on Ben Rahhal, see Chapter 9. Ben al-Hajj Hamou wrote "Projet de réforme de la justice musulmane en Algérie," presented to the Commission de Dix Huit of the Senate in 1893.

Chapter 8

TOWARD A DEFINITIVE COMPROMISE: POLITICS AND THE MUSLIM COURT QUESTION IN THE 1880s

The final phase in the evolution of the Muslim court question in Algeria, leading to a definitive compromise, lasted from the late 1870s, when attacks against the qadis began in earnest, to 1892, when a new decree effectively gave formal consecration to the existence of the qadis within the colonial system. The history of the Muslim courts in this period is different from that of previous phases, for it can no longer be understood as an independent issue. Rather, it needs to be seen in relation to a large, complex web of events, personalities, and issues. The question was no longer one of what form the Muslim judicial system should take on, but of whether it should exist at all.

That question could not be resolved by commissions of experts, but rather had to be decided in the arena of politics, which, in the Algeria of this period, was a rapidly changing one. My interest is both in how those changes were influenced by the development of the Muslim judicial system up to this time, and in how they affected the final resolution of the Muslim court question.

The picture presented by Ageron for this period focuses to a large extent on Paris, on the inquiry on Muslim justice by the Isaac Commission of the Senate, and on the affair of the qadi of Miliana.[1] His presentation concentrates on the role of liberal politicians of the metropole in responding to the wave of Muslim protests unleashed by the decree of 1886, which drastically limited the competence of the qadis.[2]

The limitation of this approach is that it does not take sufficient account of local political forces, events, and personalities. To do so is often difficult, for monographs and biographies in this area are next to non-existant.

[1] Ageron, *Les Algériens*, pp. 209-217. On the Miliana affair, pp. 443-445. For a full report of this affair, see Sénat, Documents, Annexe 136, 19 June 1891. Newspaper clippings and a few minor documents on the affair can be found in F80 1725.

[2] There is virtually no material available at present in French or Algerian archives from the Ministry of Justice, which would be essential to a full study of the formation of these decrees.

From the beginning, I was convinced that the critical events took place, not in Paris or Algiers, but in Constantine, the center of a cultural and political revival in the late nineteenth century. And eventually I found a key piece of information buried in the newspaper collection at the Wilaya of Constantine.[3] It is this: the well-known wave of petitions of 1887 was made possible by an accord between the Muslim notables and the colons. And that accord in turn was inspired by the appearance of a crucial actor of later years: the urban Muslim crowd.

The compromise embodied in the decree of 1892 represents the endorsement by the French government of a compromise formulated in 1887 in Constantine. It is the earlier compromise which I believe to be critical, for the real problem lay, not in whether Parliament could accept the qadis (most French senators and deputies scarcely knew what a qadi was), but in whether the Algerian colons could come to terms with them. This, they did, with remarkable suddenness, but not unpredictably.

The famous affair of the qadi of Miliana underscores the colons' acceptance of the qadis, for it involves, not the persecution of *the* qadis, but a cabal against a particular qadi. It is, if anything, a sign that colon mayors, for all their disdain of things Arab, had begun behaving very much like the qaids of old. And just as the qadi Bu Diaf could vindicate himself in the early nineteenth century before the majlis of Algiers, so the qadi Ben 'Abd al-Mumin of Miliana could vindicate himself before the Senate in Paris. This is an interesting but separate story.[4]

The "war against the qadis" and its resolution in compromise are extraordinarily complex. They involve French domestic politics, international rivalry and intrigue in the Mediterranean Islamic world, and municipal and provincial politics in Algeria, especially in Constantine. This is indeed a dizzying combination. But, in the unravelling, one comes across critical and unexpected insights on each of these subjects. For historians of more conventional fields, I hope that the following analysis will show that Algeria is not some strange and isolated island, but rather a crossroads where "great" cultures, dealing with each other at close quarters, had to come to terms with one

[3] The Wilaya (Prefecture) of Constantine and the Bibliothèque Nationale of Paris have the best collections of newspapers, but before the 1880s they are incomplete.

[4] On Bu Diaf, see Chapter 1. Apparently one of the major sins of the qadi of Miliana, in the mayor's eyes, was to have given the rabbi suggestions on how his congregation should vote in an election.

another. For Algerian historians, I hope that this analysis will point to some large gaps in our knowledge.

8.1 The Struggle for the Levers of Judicial Power

In analyzing the "war against the qadis," one needs to ask a question regarding the role of different parties on the French side. Who was responsible for launching the attack? To blame the colons, simply on the basis of their rather callous reputation, and some of their inflated rhetorical attacks against "those strange magistrates," would be unjustified, and it would prevent one from understanding the resolution of the conflict.

The debates over judicial policy in the 1870s and 1880s involved two central questions: the rules governing the recruitment of Algerian juges de paix, and the "unification of jurisdictions," a discrete way of referring to the elimination of the qadis. A major thrust of the "war" involved the reduction of the number of mahkamas. This, odd though it may seem, owed more to a desire to create more posts of juge de paix than it did to any serious plan for total judicial assimilation of the Muslims.

It is crucial to understand here that, in matters of justice, the colons were in some respects just as "colonized" as the Muslims. Indeed, in one respect, they were even more so, for they were not allowed the dignity of having their own judges. The Algerian juges de paix, the men who stood at the first rung of the judicial hierarchy, were all from the metropole. The colons could be far more acerbic in their attacks on the juges de paix than on the qadis. One colon described the situation thus:

> The Administration has considered the office of juge de paix in Algeria as a training phase through which must pass the young people destined for the magistrature, or else as a refuge for misfits and failures from the metropole. . . . It is to these greenhorns (*imberbes*) who have no other preoccupation than advancement . . . , to these dried-up fruits, these washed-up election brokers (*ces courtiers électoraux décavés*), patronized by politicians of the metropole, that one confers the very delicate mission of rendering justice.[5]

There was considerable ground for complaint. Most of the juges de paix were young and inexperienced, coming straight out of law

[5] P. Trolard, "Le juge de paix en Algérie, notamment du point du vue indigène," *Bulletin de la Société d'Études Politiques et Sociales*, 2, 1905, p. 85.

school. They had chosen to take Algerian posts, in most cases, to expedite a career in the metropolitan magistrature. Only a few venturesome souls took a liking to the milieu, and made the effort to learn Arabic or Berber. Serving in the "*petit bled*" was, under the best of circumstances, something like a term in purgatory.[6]

When a poorly conceived change of policy suddenly expanded their competence to include a host of Muslim civil affairs, they were, like the qadis of the 1860s, placed under great stress. This does not seem to have led to a rash of assassinations, as had been the case for the qadis. With most of the juges de paix spending less than a year in a single post, one scarcely had the time to develop a healthy grudge, let alone launch a bloody vendetta. But the new pressures did, it seems, encourage a proclivity for suicide among the juges de paix.[7]

The colons proposed a remedy for the situation. They asked that locally recruited juges suppléants, without formal legal training, but with long experience, be allowed to serve as juges de paix, and/or that juges de paix be required to have special training in "native law and customs."

Such training could be obtained only at the Algiers Law School, founded after long delay in 1879. Such a requirement, in order to be practicable, would have to be combined with the upgrading of the school to a university faculty, which could grant the degree of license necessary for entry into the Algerian magistrature.[8] And this would, quite simply, lead to an "Algerianization" of the juges de paix.

The Government-General, and the Parliament in the metropole, consistently rejected these demands, and did not authorize the Algiers Law School to grant licenses, or require the Certificate of Native Law and Customs for the juges de paix. Colon aspirants for the post were

[6] One who did adapt was the man who used the pseudonym "El Bidi" in publishing *Nos jusiticiables musulmans*, Constantine, 1902. He saw himself as a champion of the lower class against the wealthy. For a remarkable treatment of the trials and tribulations in the life of a fictional Algerian magistrate, see the novel, "L'innamovibile," by P. Coeur, serialized in *Le Temps* in 1889. A judge who took less warmly to the Algerian experience was Maurice Gentil, author of a doctoral thesis, *Administration de la justice en Algérie*, Paris, 1895. Those sent to the Kabylie seem to have developed a sense of mission absent elsewhere. See A. Saurin, *Notice sur l'organisation judiciaire en Kabylie*, Paris, 1876.

[7] There were back-to-back suicides in Azzefoun and Dellys in early 1889. See *Le Temps*, 13 February 1889.

[8] On this question, see Paul Bert, in Chambre des Députés, Documents, Annexe 236, 18 January 1878. He suggests that metropolitan juges de paix should take a training course at the École de Droit of Algiers. Juges de paix in France at this time were not obliged to have a law degree.

told that they should "reacquaint themselves with the metropole."[9] The message seemed quite clear: the metropolitan government would not allow justice to be exposed to "local influences."

Why, then, did Parliament, top-ranking French magistrates, and even the Conseil d'État approve a policy of reducing the number of qadis, and contracting their jurisdiction, while creating more posts of juge de paix, and expanding their jurisdiction to include a great deal of Muslim litigation? Such a direction in policy could hardly but strengthen the argument of the colons for local recruitment.[10]

The evidence points to an embarrassingly simple answer: while the administration justified the recruitment policy by insinuating that small-town Algerian politics were so corrupt and unsavory that only a metropolitan could be entrusted with judicial functions there, there were also motives which stemmed from a rather unsavory side of metropolitan politics. Every change in regime tended to bring with it, sooner or later, a judicial purge. Napoleon III's tactic was to demand an oath of allegiance which ardent royalists and republicans alike refused to take, thereby opening places on the bench for loyal retainers.[11]

The new republican regime had not swept to power, but rather had barely squeezed through the back door in 1875. With high principles and a slim majority, it is perhaps understandable that the republicans resorted to a rather circuitous tactic for their judicial purge.

It occurred in 1883, when Parliament voted to get rid of superfluous judicial posts and suspend nomination of judges for three months. The Garde des Sceaux delayed promulgation of the law for a month in which he packed vacant posts which were slated for elimination with loyal clients, who could then be appointed to other posts once the law took effect. The liberal economist and politician Léon Say commented on the results: "Never has the abuse of recommendations been pushed so far. This looks like the *ancien régime.*"[12]

[9] The phrase is used by Pelletrau-Villeneuve in the Budget Report for 1873, in J.O.R.F., 5 December 1872. See also a speech of the Procureur Général, in *L'Indépendant de Constantine*, 19 July 1886.

[10] It was much easier at this time to find native affairs experts among colons than among metropolitans. Outstanding examples are Dominique Luciani and Xavier Coppolani. The Isaac Commission found that French judges often had to abdicate their roles to interpreters or assessors.

[11] See Colfarvu, in Chambre des Députés, Documents, Annexe 1012, 8 July 1886.

[12] Léon Say, quoted in Vicomte d'Avenal, "L'extension du fonctionarisme depuis 1870," in *Revue des Deux Mondes*, 201, 1 June 1881, p. 583. On the purge, see Georges Picot, "Les magistrats et la démocratie," *Revue des Deux Mondes*, 62, 15 March 1884,

The coincidence in timing between the "purge" and the sharp acceleration in the creation of new posts of juge de paix in Algeria (and its corollary, the elimination of qadi-ships) makes a link seem obvious. The leading figures of the Algerian bench, such as Ménerville and Sautayra, had consistently sought to expand the role and numbers of the French magistrature in Algeria,[13] but it was only the advent of the republican regime that allowed them to realize their vision on a major scale. Viewed from the Ministry of Justice in Paris, Algeria was above all a convenient channel through which to feed loyal republican magistrates, the more the better.

Once set in motion, the process of cutting back on the number of mahkamas pointed to the eventual elimination of the qadis. While colon deputies did regularly encourage Parliament in this direction, one must not conclude that it was above all considerations of metropolitan politics which enabled them to take what one observer has called "*un léger fond d'histoire*"—the proverbial corruption of the Muslim judge—and transform it into a "colossal legend."[14]

To take only the most belabored of their arguments: colon deputies were quite fond of citing Ménerville's statistics on the revocation of qadis. They would report triumphantly that there had been 548 revocations in a period of five years. Ageron finds the figure outlandish, but it may have reflected something approaching the truth for 1860-1865. But the question of accuracy is in ways secondary to the fact that the same figure was recited year after year as if it referred to the recent past.[15]

Neither the colons nor other deputies of the period took the Mus-

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pp. 288-315. The relation between the purge and Algerian juge de paix recruitment is made clear in a speech by the Procureur Général Pompei, in Con. Sup., Session of 16 November 1883. See also Benjamin F. Martin, "The Courts, the Magistrature and Promotions in Third Republic France, 1871-1914," *American Historical Review*, 87, 4, October 1982, pp. 977-1009.

[13] For an example of Sautayra's views, see his speech in Con. Sup., Session of 22 November 1881. A few minor insights on Sautayra can be gleaned from his correspondence with Ismail Urbain, in Series X at the Archives d'Outre Mer, Aix-en-Provence. For Ménerville, see Con. Sup., Session of 1 November 1873.

[14] A. Billard, "Étude sur la condition juridique," p. 36. The term "definitive compromise" is also Billard's.

[15] The figures on revocations are cited in the budget reports from 1876 to 1878. However, by this time, revocation was used sparingly, and was usually followed by criminal charges against the judicial official involved. One can find other indications of a propensity of French magistrates to distort the facts through the manipulation of statistics: see V. Mallarmé, "La brochure *L'administration de la justice en France et en Algérie et ses conclusions*," in *Bulletin judiciaire de l'Algérie*, 1, 1 May 1877, pp. 129-134, which hints at blatant distortions in figures on Kabyle justice.

lim justice question as a serious issue worthy of careful study and debate. Their real interests were in the budget (between 1874 and 1885 they cut the Muslim justice budget from 205,700 francs to 95,000) and in the possibility of creating more posts of juge de paix.

As soon as the issue of Muslim justice was tied to a different question—that of naturalization—many colon politicians were willing to change their tune.[16] Qadis would no longer be attacked as an abstract bogeyman. Rather, as in the Miliana affair, they would be done the honor of being attacked individually, a sure, if paradoxical, sign of their acceptance as a group.[17]

In brief, the colons' primary interest was in local recruitment of juges de paix, and that of the government in Paris, metropolitan recruitment. Neither of these parties seriously objected to the qadi's being maintained as judge of personal status and property disputes (as opposed to land disputes which had been placed under French jurisdiction in 1874). The only ones really in earnest about eliminating the qadis were men like the Arabist magistrate Sautayra who were very directly concerned with the issue.

That the "war" could have been carried as far as it was indicates what was proved in 1854 and again in 1859: that in Algeria, a determined individual or coterie could push through their own Muslim justice decree, based on one or another idea of how the country should be run. Each such decree, in very short order, provoked a crisis. The only durable decrees, those of 1866 and 1892, were the product of careful study, deliberation, and compromise.

8.2 Ferment in Constantine

The 1870s and 1880s were a time of great political ferment around the Mediterranean Muslim world. Algeria is often seen as insulated from this ferment, but it was clearly evident in the city of Constantine. It is important to us because the key figures in it were all 'ulama, who had played prominent roles in the schools and the judicial system, and because the Muslim court system came to figure prominently in their political activity.

The first independent Arabic newspaper published in Algeria appeared in 1877 in Constantine. It appeared only briefly, and we may never know its title, let alone actually recover a copy of the paper.

[16] They would change to the extent of abandoning the demand for elimination of the qadis. After 1887 they ceased to be protagonists in the Muslim justice question.

[17] Attacked by a mayor, a qadi was sure to find help from the mayor's political opponents. This was the case in Miliana.

Fortunately, material in the archives and in other newspapers gives a clear idea of the unusual circumstances under which this paper came into being.

Its publication came as a reaction to a pamphlet written by a soon-to-be professor at the médersa of Constantine, 'Abd al-Qadir al-Majjawi, and published in Cairo. Since Majjawi had links with the Amir 'Abd al-Qadir, one might speculate that the latter was involved in financing the publication. The Arabic newspaper is important mainly as evidence to the impact of this pamphlet.

'Abd al-Qadir al-Majjawi and the Beginning of the Local Nahda

Majjawi was the son of a prominent Tlemceni faqih who had, like the Bu Talibs, taken refuge from the chaos of war in Tangier. 'Abd al-Qadir was born in the late 1840s, thus about the time of the Amir's surrender. The one detail relating to his youth which has survived seems quite appropriate: his father, feeling that the degenerate atmosphere of Tangier might corrupt his son, sent him to study in Tetouan, a town dominated by the austere puritanism of the Rifians.[18]

He first came to Constantine in 1870, and I have found no explanation of this. But the principal factors can be deduced: he was related through bonds of marriage and shared exile to the Ben 'Abd al-Qadir Bu Talibs, who were by then settled in the Constantinois. Upon arriving in the city, Majjawi established a small school which proved immediately popular with the local people. Here, the date helps us to understand what happened. The new decree on Muslim justice had opened up recruitment to non-médersèens, and, as I have explained, the dominant figure of Muslim Constantine, al-Makki Ben Badis, bore a particular animus against the médersa. It is conceivable that Ben Badis was a party to inviting Majjawi to Constantine, and that he and other notables of the town contributed to financing the school.

Such a vigorous popular figure as Majjawi could not long be ignored by the administration. It appears that they attempted to bring him into line by stages: first he was given a teaching post at the Kittani mosque (1873), and then he was named to the official médersa (1878).[19] In the latter date, again, his career pattern coincides with a change in policy, as médersa attendance was once more made com-

[18] Dabbuz, *Al-nahda al-haditha*, p. 86.

[19] *Ibid.*, pp. 96-97.

pulsory for entry to the magistrature. By naming Majjawi to the médersa, the French brought him under closer control, and may have been trying to improve the médersa's image in the eye of the Muslim public.

While his nomination was being considered, in late 1877, Majjawi had a pamphlet published in Cairo, which stands as the first significant expression of Islamic modernism in Algeria. it is also a poignant expression of the dilemmas of Algerian cultural and intellectual life under colonial rule.

Its major points were two. First, it decried the intellectual and cultural inferiority of Algeria vis à vis both Europe and the Middle East. Second, it proposed as a remedy an educational curriculum, based on modern teaching methods already in use in Egypt, which concentrated on both religion and science. Majjawi proclaimed that science was not in any way a threat to religion, but rather could complement it, serving as additional proof for the necessity of God's existence, while also contributing to the amelioration of material life.[20]

A summary of the pamphlet by a military interpreter, Arnaud, was published in the *Mobacher* (the official government newspaper) on 12 December 1877, under the title of "Un livre utile." The above-mentioned Arabic newspaper, which harshly criticized Majjawi, appeared shortly after the publication of Arnaud's article. Its appearance was apparently triggered by the implicit approval of the Government-General for Majjawi's pamphlet, signalled by Arnaud's article.

The tenor of the Arabic newspaper can be judged by material in its sponsor, *Le Progrès de l'Est* of Constantine. On 20 December, *Le Progrès de l'Est* published an article entitled "Un livre nuisible," which proclaimed that the Arabic language and culture should be no more encouraged in Algeria than were Bas Breton or Basque in France. The substitution of French for Arabic, it proclaimed, could only benefit the Algerian Muslims and simplify the tasks of administration and justice. On 22 and 25 December, *Le Progrès de l'Est* published letters from Muslims who claimed to be insensed at Majjawi's insults to Algeria. One of these letters also claimed that Majjawi had used the *Mobacher* article by Arnaud "to verbally rally the people of Constantine."[21]

The position taken by *Le Progrès de l'Est* is perplexing. Its editors denounced the Arabic language, and called for total assimilation of the Algerians to French language and culture. Yet they sponsored a

[20] See Arnaud, "Un livre utile," *Mobacher*, 12 December 1877.

[21] These copies of *Le Progrès de l'Est* can be found in the Aix archives.

newspaper in Arabic, and those Muslims who wrote letters to the paper to attack Majjawi did so, not to advocate cultural assimilation, but to attack the proposition that the Algerians' command of Arabic was inferior to that of Eastern Arabs. The missing element in the picture is the identity of the Algerian Muslim editors of the Arabic newspaper sponsored by *Le Progrès de l'Est.*

One should not facilely assume that they were renegades to the Algerian cause. In their favor it must be noted that the Arabic newspaper upset the authorities, and appears to have been rapidly driven out of existence.[22] In contrast, Majjawi was tolerated. At the same time, though, it seems that those pioneer journalists did not have a clearly articulated point of view and, because of their lack of sophistication, they could be easily manipulated by the colon journalists with whom they had entered a tactical alliance.

What is central to this entire strange episode is that Majjawi's pamphlet stirred considerable emotion in Constantine.[23] The explanation, I think, is that he had put his finger on a concern deeply felt by the Algerian Muslims. It involved at once a sort of cultural inferiority complex and a fear of "deculturation." The pamphlet should be seen as marking the opening of the "local nahda" of the Constantinois, an event of prime importance for Algerian intellectual history.

If, as Dabbuz claims, Majjawi was pressured by the French into accepting a médersa position, one might hypothesize that in publishing the pamphlet Majjawi was in turn putting the administration on the spot. Either they would have to endorse the pamphlet, or else they would have to deny him a post at the médersa and face the prospect of serious trouble if they sought to shut down his independent school. The Arnaud article can thus be seen as a sort of acceptance on the part of the government of a fait accompli, an admission that they were anxious about Majjawi, and would bend over backwards to accommodate him as long as he kept his "revival" efforts within the limits of cultural affairs.

Indeed the administration would have been hard put to suppress the pamphlet and muzzle Majjawi. He did, after all, espouse science—and what could have been more respectable in that age of positivism? More important, he was a widely popular figure in Constantine, simple and forthright, mixing with the common people,

[22] The Commandant of Constantine reacted very harshly. See Div./Cst. to GGA, 20 and 22 December 1877. He was especially irritated by the attacks on the *Mobacher* article. His reaction underscores the delicate nature of the question of Majjawi and his pamphlet.

[23] See Div./Cst. to GGA, 15 November 1877. This report helps to confirm Dabbuz's contention that Majjawi was indeed a popular figure.

"*al-sha'ab*," and projecting pride in his cultural roots through his bearing and dress. And if this were not enough, he was also quite clearly a protégé of the Amir.

Al-Makki Ben Badis, Pamphleteer

The other major figure of Constantine at this time was al-Makki Ben Badis, a man much older than Majjawi, and a native of Constantine. He has figured at several points in previous chapters, so here I will simply summarize his views and discuss the new direction he took in the 1870s.

Although he spoke French, and was clearly open to the adoption of European methods in such fields as agriculture, he cannot, in ideological terms, be called a "modernist." Nor can he be called a "traditionalist." He was not an intellectual (a term which is appropriate for Hasan Ben Brihmat). Rather, he was a judge, a political spokesman, something of an autodidact, and, late in life, a publicist. In looking closely, one can detect a distinct point of view, which I think is best expressed in his impassioned rejection of a proposal by a European conseiller-général for the codification of Islamic law: "Three sorts of things can be detrimental to man: an attack on his worldly goods; an attack on his physical person; an attack on his religion. The first is the lightest, the second intermediate in importance, and the third most terrible, for it attacks what conscience respects the most."[24]

This helps to explain how al-Makki could at once be open to change, for instance on economic or technical matters, or willing to accept certain political compromises, and yet, when it came to religion, a staunch Islamic integralist. For, in matters affecting mere physical livelihood, one could make pragmatic adaptations without, as he saw it, seriously endangering a deeper cultural identity. But when it came to religion and religious law, no compromise was possible.

While in the 1850s and 1860s al-Makki had served "on all the commissions," in the 1870s he turned his attention more to his activities as a conseiller général, and also turned out a number of pamphlets, the first of them in 1875. Further, he gave up his post as qadi to become a Muslim assessor at the Tribunal of Constantine, a move which probably represents a realistic, though regretful, assessment of where the power lay.

His taking up pamphleteering, albeit on a small scale, can be seen as part of the journalistic "revolution" of his time, and also as a

[24] Al-Makki Ben Badis, in Con. Gen./ Cst., Session of 3 October 1865.

significant event in Algerian politics. Al-Makki was the first major Algerian political figure to adopt this particular tool of European politics. Over the twenty years that followed the publication of his first pamphlet, the printed word was to take on a major role in Muslim politics in the Constantinois, a phenomenon of vast implications.

His pamphlets and his speeches in the Conseil Général[25] point to three major concerns in this period: expanding Muslim political representation on deliberative bodies, from the municipal councils all the way to the parliament, opposing the special native penal laws of the Code de l'Indigénat, and combatting proposals for the mass naturalization of the Algerian Muslims.

It was this last issue which touched directly on Muslim justice, for naturalization, as it was then understood in most quarters (and continued to be through the early twentieth century), implied the abandonment of the shari'a as law of personal status. Elimination of the qadis, as the colons saw it, would *not* involve either naturalization or abandonment of the shari'a. Indeed colon politicians often took great pains to insist that they were attacking only "those strange magistrates," and not the Islamic religion.[26]

The colon deputies who engaged in the "war against the qadis" did not take account of two elementary facts: first, that these "strange magistrates" were not old-fashioned local holy men who could be simply dismissed and put out to pasture, but in many cases were men of considerable experience, who spoke French, and who had ties extending throughout the province, and to the Algerian colony in Syria; and, second, one could not easily separate the issue of elimination of the qadis from that of naturalization and the abolition of Islamic law. Colon politicians were adept at a rather facile demagoguery, but when they realized that such tactics could be used by others, they soon became pragmatic.

8.3 The Threads Intertwine: the Guelma Conspiracy of 1881

By far the oddest incident in the history of Algerian Muslim justice was the Guelma conspiracy of 1881.[27] But, in its very oddness, it

[25] His major work as a pamphleteer was *Exposé des lois répressives pouvant s'appliquer à l'Algérie*, Constantine, 1875. His most important speech before the Conseil Général came in the session of 17 October 1881, dealing with political representation. For a pamphlet by Hamida on agrarian problems, see *Al-Muntakhib*, 7 May 1882. Hamida replaced his father on the Conseil in 1882.

[26] On the naturalization question, see Ageron, *Les Algériens*, pp. 343-351

[27] There is an entire dossier on the affair. The major document in it is a report by the prefect of Bône, dated 23 May 1881. I owe discovery of this document to Mahfoud Smati of the University of Algiers.

draws together all the major strands of this history: the evolution of judicial organization, the emergence of itinerant bureaucrat qadis, the vagaries of policy on médersa curriculum and judicial recruitment, and the threat to the entire system bruited heedlessly by colon politicians and newspapers. Finally, it reveals the major political currents of the day.

What apparently happened was that three qadis of the Guelma region, Sa'id Ben Shettah, Ahmad Ben al-Fasi, and 'Allawa Ben Sassy, had been organizing an effort to protest against the colon politicians' attacks on the Muslim courts. It is significant that these three men were representative of the itinerant qadis of the Constantinois, discussed in Chapter 7. There is evidence to suggest that this effort was part of a larger one coordinated from the city of Constantine, of the sort which came to the surface again in the petitions of the late 1880s.

At the time they were organizing their protest, France invaded Tunisia, and there was a pervasive sense of insecurity in Algeria, for fear that the departure of seasoned troops from local garrisons might spark off a revolt similar to that of 1871. The three qadis, along with a larger group of local notables, were accused of attempting to stir up a rebellion in support of Tunisian resistance. The source of this accusation was a young man of questionable character, a recent graduate of the médersa, Masa'ud al-Jabari. Because of the large-scale elimination of posts in the Muslim judiciary, he had had to take employment as a railway clerk, and it seems likely that his bitterness over his own situation, together with some interesting but confused political ideas, motivated his accusations.

The alleged conspirators were put on trial in Algiers, and eventually released for lack of evidence, but they were still given disciplinary transfers. Ben Shettah soon thereafter resigned his post in bitterness, and became strongly anti-French. He was to be involved in an incident in 1889, in which he was accused of stirring up a wave of emigration to Syria.[28]

The Guelma affair illustrates the network of ties among the Constantinois urban notables, ties in which the qadis had an especially important role. It also demonstrates the difficulty of government employees' playing a role in political protest, since they could be disciplined either judicially or administratively if they stepped out of line.

It is interesting to compare the Guelma incident to another one in the West, which was also a product of the hysteria of 1881. In the area of Sidi Bel Abbès, a group of Muslims were arrested after re-

[28] Piere Bardin, *Algériens et Tunisiens dans l'Empire Ottoman de 1848 à 1914*, Paris, 1979, pp. 132-136; and the dossier on the emigration wave of 1889 in 10 H 102.

ports that they had been seen holding clandestine meetings at night.[29] The most prominent figure in this group was Ahmad Walid Qadi, venerable Bash Agha of Frenda, and erstwhile (in Chapter 2) persecutor of Hajj Bashir Ben Khalil. Perhaps the curses which the saint of the Sdama had called down on his head while pining away in Corsica had finally taken effect.

But a more satisfying explanation is that Walid Qadi and the makhzan elite of Oran were in a position in certain ways analogous to that of the judicial elite of the Constantinois. They, too, were part of a wide network, centered on the provincial capital. One cannot find in the Oranais as dedicated and as skilled a publicist as Ben Badis. But the West did have a pamphleteer, none other than Ahmad Walid Qadi. In his *Impressions de Voyage* (1878), he called for Muslim representation in the Chamber of Deputies. And in 1878 those were fighting words.[30]

The Oranais was thus not entirely subdued. But the most likely spokesmen were old men, veterans of the war against the Amir, and their power was increasingly being eroded. Further, there was a long-standing enmity between them and the religious-intellectual leaders of the province who, by all evidence, had little interest in conventional politics, perhaps because they lacked what seemed to be crucial to elite "politicization" in this period: positions on the Conseil Général.[31]

8.4 Constantine Politics in the 1880s: Origins of a Transaction

Through the next decade, the political ferment which had led to the Guelma affair became more clearly manifest. I will treat the events of this period in only summary fashion, for they involve issues and

[29] On the Sidi Bel Abbès incident, see Ben Da'ud, Con. Gen./ Oran, Session of 13 October 1881. A report on the incident was sent from GGA to Minister of Interior, 11 October 1881. This is noted in the Cahier de l'Enregistrement, 2 HH 12, but the report seems to be lost.

[30] The one copy which I know of is in the Bibliothèque Nationale in Tunis. The Arabic title is *Al-rihla al-qadia fi madh fransa wa tabsir ahl al-badia* (The Exemplary Travel Tale in Praise of France for the Enlightenment of the Bedouin People). The Arabic and French versions differ, with the French political rhetoric being omitted from the Arabic section, so the political views expressed may not have been those of Walid Qadi himself. In 1883 he published another pamphlet, after he had cleared himself of conspiracy charges. It was on the history of his family.

[31] Al-Hanafi Ben 'Abdullah, qadi of Mascara, was on the Conseil Général of Oran, but he does not seem to have been a member of the local sharifian elite.

questions which go far beyond the scope of this study. They are, however, crucial to understanding the "definitive compromise" which ended the "war against the qadis", and they have generally been ignored by historians of Algeria, despite their importance and interest.

The central question of the period was that of the mass naturalization of Algerian Muslims, which was in turn tied to other important questions—obligatory military service, increased political representation, special native penal laws, and Muslim justice. In the event of mass naturalization, the Algerian Muslims would, in effect, surrender their autonomous political and cultural identity in return for full political representation and protection under the law. Under the existing arrangement, they had less power and fewer rights, but were able to preserve a certain autonomy.

The vast majority of both Muslims and colons rejected naturalization, each for their own reasons. Thus the end result was a compromise, a coming to terms between Muslim leaders and colons. Parliamentary liberals such as Senator Isaac can be given some of the credit for curbing the rasher tendencies in Algerian policy. But the stereotype of the ferociously anti-Muslim colon can be dangerously misleading. One cannot ignore that colons and Muslims lived side by side in more or less peaceable fashion for a long stretch of time. Such peace as there was can be attributed to accords, many of them tacit, but in some cases explicit (though to be sure not widely publicized by either side). One of these accords concerned Muslim justice and naturalization.

In the 1880s there were two "firsts" in Constantine politics: the first "serious" Arabic newspaper and the first important mass civil disturbance. The former helps us to understand the compromise struck in 1887. The latter directly inspired the compromise.

Al-Muntakhib: Political Journalism Comes to Constantine

The existence of *al-Muntakhib* is fairly widely known (unlike that of the peculiar earlier Arabic newspaper sponsored by *Le Progrès de l'Est*), but it has not been carefully studied. Some scholars may assume it to have been simply a curious French newspaper, since it was bilingual and directed by a European. However, if one has the opportunity to read a publicity leaflet printed in Arabic only, which can be found with the collection of the paper at the Arsénal in Paris, one realizes that some major Muslim figures were involved.[32]

[32] *Al-Muntakhib* began on 23 April 1882, and lasted until early 1883.

This leaflet lists as "translators" of the paper Hamida Ben Badis, Ahmad Ben Lefgoun, Hamou Ben Yusuf, and Hassuna Ben al-'Amushi. The first two, and especially Ben Badis, are well-known figures and help to situate the newspaper within the context of Constantine Muslim politics. Hamida Ben Badis, like his father, was the principal Muslim spokesman on the Conseil Général. Until a major turn of events in 1887, it was he who presented the Muslim position in the Conseil, while all the other Muslim conseillers rather mechanically endorsed it. Ahmad Ben Lefgoun came from the family who had once held the hereditary post of shaikh al-islam in Constantine, and whose fortunes were now in precipitous decline. He himself had been a military interpreter, and had at least applied for naturalization at one point (in 1866, shortly after a new decree facilitated the process).[33]

The title of the paper, rendered in French as "l'unique,"[34] meant literally "the elected," and this points to the major concern of the paper: acquiring for the Muslim population a larger voice in Algerian politics. The major concern of political activity, in the paper's view, was economic and fiscal issues. This conception shows the strong influence of the paper's European editor, Paul Étienne, in articulating the views expressed in *al-Muntakhib*.[35]

Statements concerning the suppression of mahkamas and the threatened elimination of the qadis are conspicuously absent from *al-Muntakhib*. But, significantly, one of the last issues (it endured for only a year) contained a long article calling for the codification of Islamic law, and proclaiming: "Citizen or pariah, those are the alternatives." It decried the fact that the shari'a, for Algerian Muslims, should be "*un brevet d'inégalité civile*," and cited the policies of Austria and Russia toward cultural minorities as models to follow in Algeria. It is clear from the article that such codification was intended to be coupled with admission to full political rights and duties, including equality of taxation and universal military service.[36]

Al-Muntakhib evoked a strong reaction from the government and from the established colon press. *Akhbar* (Algiers) saw it as part of an "insurrectional movement," claiming that delegates of the paper had been sent to Morocco, Tunis, and Tripoli. *Le Courrier de Bône* proclaimed that "very serious interests are at stake here, since noth-

[33] On naturalization, see Div./Cst. to GGA, 18 September 1866. He learned French at the school run by the Arabist Cherbonneau. See *Journal de Constantine*, 5 June 1848.

[34] *Al-Muntakhib*, 30 April 1882.

[35] Étienne was involved in *La Matraque*, a left wing colon paper.

[36] *Al-Muntakhib*, 17 December 1882.

ing less than the country's tranquillity is involved. Freedom of the press has nothing to do with the matter." Both papers reported that *al-Muntakhib* circulated widely in the countryside.[37]

It is difficult to know just how the Muslim public reacted to al-Muntakhib. One can suspect that they heartily agreed that taxes were too high, and that too much land had been confiscated. But one may also suspect that they became wary when the paper ventured into the area of codifying Islamic law and introducing military conscription. The latter points were in a sense the hook that lay beneath the bait of lower taxes and greater political representation.

The program reflected the tendency, though perhaps not the solid and clearly thought out convictions, of younger members of the urban elite like Hamida Ben Badis. Probably only European educated professionals like Dr. Hajj Tayib Morsly could embrace it without any reservation.[38] Although this tendency was numerically weak, it played an important role, for it helped to strengthen the position of more moderate spokesmen by making that position more acceptable to the government and the colons.

The June Riots of 1887

As for the urban crowd, it made its debut in Constantine on 23 June 1887, when large-scale fighting broke out between the general Muslim populace and the Mzabis at the end of the month of fasting.[39] The major interest, for my present purposes, is that some of the contributing factors appear to have been judicial questions.

Public hostility to the Mzabis was related in part to recent bankruptcies,[40] and may well have been related to the Mzabis' attempts

[37] See *Akhbar*, 4 August 1882, cited in *Al-Muntakhib*, 13 August 1882; and *Courier de Bône*, 5 July 1882. The Governor-General sent reports to Paris, 1 July and 1 September 1882, registered in 2 HH 12.

[38] Morsly, son of an Oranais spahi lieutenant, was the first European-educated Algerian Muslim doctor and a central figure in the Cercle Salah Bey, a group of modernist intellectuals. For his views in this period, see *La question indigène*, Constantine, 1894.

[39] On the riots, see *L'Indépendant de Constantine*, 24 to 28 June and 1 July 1887. The incidents were spread over a period of three days, resulted in at least 40 arrests, and, on the Mzabi side, at least 30 serious injuries and 3 or 4 deaths. The major participants on the "Arab" side seem to have been artisans and soldiers. The only identifiable leader is Muhammad Ben Matmatia, leader of a dissident faction of the Tijaniyya in Constantine.

[40] See *L'Indépendant de Constantine*, 23 March 1886. The case involves a man who fled to the Mzab oasis, leaving his debts unpaid. The Mzabi jama'a of Constantine

to secure the establishments of separate courts for themselves.[41] There were at stake here both material questions—local women who married Mzabis might have difficulty in claiming their inheritance share before the 'Ibadi qadi—and political ones. The Mzabis could be portrayed as breaking ranks, making a separate peace with the colonial administration while the onslaught against Muslim justice continued.

But there is a simpler and more satisfying explanation put forward by Hamida Ben Badis. He argued that the riots occurred because the qadis were no longer competent, following the decree of 10 September 1886, to judge even petty commercial disputes,[42] such as the altercation over the price of a cup of milk which had sparked the disturbances. Thus one might see here a pattern similar to that of the early 1860s, when an abrupt change of policy hindered the resolution of conflicts and thus contributed to outbreaks of violence.

More important than the causes were the repercussions of the riots. They were used by the colon press as an argument against mass naturalization,[43] a question now pending in Parliament. Passage of the Michelin-Gaulier bill would, it was claimed, bring on an uprising under the leadership of fanatics like Muhammad Ben Matmatia, the Tijani muqaddam who was prominent in urging on the rioters.

At the meeting of the Constantine municipal council on 3 July, the adjoint au maire, Sulaiman Ben 'Aissa, son of the man who had commanded the defense of Constantine in 1837, arose to say that he and many councilors were "persuaded that the natives would associate themselves with a petition rejecting the naturalization which one seeks to impose on them."

The Mayor Ernest Mercier, a prolific scholar and long time judicial interpreter, replied that he believed:

> . . . that if one repealed the last decree on Muslim justice, if one restored to native municipal councilors their right to participate in the election of mayors, if one accorded to the Muslim population the right to elect their conseillers généraux, these concessions would

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tried to settle out of court, and for somewhat reduced sums. One of the commercial houses involved refused to settle, so the Mzabis initiated a boycott of it throughout the province.

[41] On the petition for separate 'Ibadi jurisdictions, see *Le Temps*, 3 November 1888. On the efforts of the Constantine Mzabis to dissociate themselves from it, *Le Temps*, 15 January 1889. See also Louis Rinn, "Des juridictions compétentes en matière de litige intéressant Mozabites," *Revue algérienne et tunisienne de jurisprudence*, 3, 1887, pp. 236-246, and *Mobacher*, 18 October 1890.

[42] Hamida Ben Badis, in Con. Gen./Cst. session of 9 October 1887.

[43] *Le Républicain de Constantine*, 26 June 1887.

fully suffice to the mass of natives, who have no desire at all for naturalization, who find themselves much freer and more independent (as they are now) than they would placed under the regime of our laws.[44]

This, in a nutshell, was the basis of the transaction that led to the "definitive compromise," the admission of the qadis to the colonial order. The position outlined by Mercier went into a petition dated 10 July 1887, signed by 1,700 Muslims of Constantine and sent to the French Senate. This was not the first petition on the Muslim justice issue. But it was the first *mass* petition, and not coincidentally the first with overt colon support. Others like it were soon to follow.[45] It would be decidedly mistaken to see this petition as the work of heroic radical activists, or as indicating a tremendous groundswell of politicization. Yet it would be just as wrong to see the petition as meaningless just because Mercier approved it. The petition did contain *demands*, moderate in nature but still demands. They represented the position of notables like Ben 'Aissa, and the qadi and conseiller général Salah Bu Shanak. And clearly it did take a degree of politicization to put together such a mass petition, even though the mayor had approved it.

That politicization was partly a response to larger currents of the time—the explosion of colon political activity that came with the advent of the republic and the general political awakening of the Islamic world at the time. But another very important element was that individual Muslims of Constantine had begun taking initiatives and speaking out, Majjawi and al-Makki Ben Badis in pamphlets, and Hamida Ben Badis and others in a newspaper.

As to whether the gradual growth in politicization helped to cause the riots, that is very difficult to say. But that it affected their outcome is beyond doubt.

8.5 A Change of Leadership

One can distinguish between two principal tendencies on the part of the Muslim elite in this period. One, a minority, tended to accept naturalization, especially in the modified form which called for the codification of Islamic law rather that for its abandonment. This group were commonly associated with left-wing Europeans, as in the case

[44] Cited in *Le Républicain de Constantine*, 4 July 1887.

[45] Bu Shanak cites mass petitions from Mila and Fedj Mezala, in Con. Gen./Cst., Session of 9 October 1887.

of the *Muntakhib* group, and also of al-Hashimi Ben Lounis, a Kabyle Assessor at the Cour d'Appel of Algiers, whose candidacy for the municipal council in 1882 was reportedly backed by "the Algerian proletarians."[46] This tendency was fairly strong in Algiers, but even in that very secular city they were probably far from constituting anywhere near a majority.[47]

The larger, more moderate group roundly condemned naturalization in any form. In the Conseil Général of Constantine, a new spokesman emerged to present the majority position on the question of naturalization. It was the first occasion in the twenty-nine years of the Conseil's existence that a major speech was delivered by a Muslim other than a Ben Badis. The man was Salah Ben Bu Shanak, qadi of Mila, a faqih from the Sétif region who, like so many successful rural magistrates in the Constantinois, had worked his way from the periphery to the center.[48]

He could not match Hamida Ben Badis when it came to turning a phrase in French, but he was in closer touch with Muslim public opinion. The message of his speech of 9 October 1887 was very much to the point: "The only benefit we desire . . . is the maintenance of our religion and our law. It is evident that naturalization would be seriously detrimental to us: witness the considerable hardships which befell the population following the decree on Muslim justice. . . ."[49] This was precisely the position of the mass petitions, the position acceptable to the colons. It was endorsed by all the other Muslim conseillers except one.

That one was Hamida Ben Badis. He presented a resolution which called simply for the repeal of the 1886 decree, based on pragmatic arguments, without any reference to the naturalization question. The implications of this omission were clear: Hamida, the political journalist, was not willing to concur in approving the terms of the "definitive compromise."

He sensed, I believe, that his colleagues, who placed preservation of the Muslim cultural identity above all else, were seriously deceiv-

[46] *Al-Muntakhib*, 14 May 1882. The following year, he was revoked as Kabyle assessor. See *J.O.R.F.*, 30 July 1883. On his call for the election of conseillers généraux (instead of appointment), see *Le Temps*, 26 October 1881

[47] Algiers municipal councilor 'Ali Ben Ismail defended naturalization. He was repudiated in a letter from electors published in *Akhbar*, 31 July 1887.

[48] Bu Shanak's career began in 1864. On a visit to France, see Div./Cst. to GGA, 9 October 1880. It would be very interesting to learn if he made any contact with French politicians on that trip. He was named to the Conseil in 1885.

[49] Salah Ben Bu Shanak, in Con. Gen./ Cst., Session of 9 October 1887.

ing themselves. Lacking political power, they had no way of effectively guaranteeing the integrity of that identity. Further, their approach could contribute to making that identity hollow and ossified, more a focus for ritual sentiment than for a living culture. Above all, Hamida Ben Badis had the sense to understand that when Muslim notables struck a bargain with the colons, they were scarcely likely to get an honest deal.

But in 1887 his was an isolated voice. He could only step aside and yield the floor to Bu Shanak, who, incidentally, was one of those early 1860s médersa graduates against whom Hamida's father had inveighed in 1865. The point is not that the médersas produced "collaborators." It is rather that the system could indeed work effectively, drawing religious leaders toward the center, as had happened under the beylik. In working at least moderately well, this system helped to produce a compromise.

As Hamida Ben Badis realized, the Algerian Muslims would have to do a lot better than work out compromises with colon mayors. But, to the credit of men like Bu Shanak and Majjawi, Ben Shettah and Ben al-Fasi, it must also be said that the compromise did mark a retreat on the part of the colons and a step for the Algerians toward the affirmation of an autonomous political identity.

Chapter 9

THE AFTERMATH: ALGERIANS AS COLONIALISTS AND FRENCHMEN AS 'ULAMA

The prospect of eliminating the Muslim courts and the médersas had been deeply upsetting to the Algerian Muslim notables, for these institutions acted as a sort of protective screen. Within the colonial social order, and especially within the colonial town, they helped to mute and conceal the inequalities between Muslim and European by maintaining a separation between the two hierarchies.

The protests of the urban notables had helped to save these institutions, but the screen which they provided was beginning to wear thin. The Muslim courts had lost jurisdiction over the most lucrative area of litigation, land cases, and there had been a sharp contraction of personnel in the 1880s, so that opportunities in the judiciary were few and not very attractive. The salvaging of the Muslim court system, in and of itself, could not have stemmed the growth of disaffection among the Muslim notables, which usually took the form of emigration to lands under Ottoman control.[1] And yet, through the 1890s and the early 1900s, the screen of official Islamic institutions was reenforced and embellished.

The critical factor in this lay outside Algeria, in France's colonial expansion in Muslim areas of West Africa, and in Morocco. This created a need for France to maintain an image of benevolence to Islam in Algeria, and it created new career prospects for Algerians as Arabic secretaries and interpreters. It was these opportunities which took up the slack created by the contraction of the judicial system, providing young Algerians with an Arabic and Islamic education with continuing prospects for employment of a sort which made it possible to combine the advantages of an alliance with the colonial state with the satisfaction of loyalty to one's cultural heritage. Colonial expansion thus gave the Algerian urban notables a new lease on a

[1] In 1889, there was an important wave of emigration to Syria, and it was reported that the Ben Badis family of Constantine were planning to emigrate, but the report was discounted by the administration. See Pref./Cst. to GGA, 10 July and 16 November 1889, in 10 H 102.

rather frail social and economic position and cultural identity, and it postponed the day of reckoning over cultural assimilation and political inequality.[2]

Colonial expansion in Muslim areas provided a key argument for the revival of the official médersas, and for official encouragement of a small-scale Islamic cultural renaissance. That this could be so was a logical outgrowth of the transformation which had taken place in the judicial realm. Algerians who pursued an Arabic and Islamic education within the system did so in order to become servants of the colonial state, not to assume the traditional roles of 'ulama. At the same time, within Algeria, the Algerians had a diminishing role in the control of Islamic affairs. French orientalists now took over the direction of the médersas, and, in a commission working on the codification of Islamic law, French specialists had the dominant role. Thus, as Algerian Muslim scholars became, more and more, strictly servants of the colonial state, Frenchmen became arbiters of Islamic values in Algeria.

Many Algerian Muslim scholars sought to carve out for themselves a place within this sytem, and to get along as best they could. But others became bitter and frustrated at the subaltern role to which they had been consigned. When World War I broke out, and France declared war on the Ottoman Empire, this bitterness came to the surface in a few isolated incidents, which conspicuously involved men who had been involved in the official Islamic establishment. Only after the war would this frustration find a new direction and coherence in the form of an Islamic reformist movement outside the control of the colonial state.

9.1 Mhammed Ben Rahhal and the Plea for Dialogue

The Algerian with the most important role in the launching of a new Islamic policy in the 1890s, and who was best able to articulate the fears and hopes of the Algerian Muslim notables at this time, was Mhammed Ben Rahhal. He was the son of Hamza Ben Rahhal, who

[2] It had long been a common practice of urban notable families to place a son as a military interpreter, while others served as judges or teachers. Djilali Sari notes that families from Nédroma and Tlemcen had numerous members in the Moroccan administration after 1912, and that a good deal of income from this source was put into land around these towns. See *Les villes précoloniales de l'Algérie occidentale*, Algiers, 1970, pp. 134–135. It is reported that there were some 300,000 Algerians and Tunisians who went to Morocco after the French conquest, either in the military or on business. See A.G.P. Martin *Méthode déductive d'arabe nord-africain*, Paris, 1919, p. ii.

had sat, along with al-Makki Ben Badis, on the Gastambide Commission in 1865. Like the Ben Badis, the Ben Rahhals were a prestigious family with a tradition of learning and with a reputation for independent-mindedness. The family were somewhat unusual in that they had dominated both judicial and administrative positions in the area of Nédroma, a small town on the coast, near the Moroccan frontier. Mhammed Ben Rahhal had resigned from his post as qaid of Nédroma in 1884, and thus could speak more independently than those notables holding government positions.[3]

The Senate inquiry into Algerian affairs in 1892 was, like the Gastambide Commission, an opportunity for the Muslims to press the administration for reforms that would give them greater political voice, and more substantial cultural autonomy. Mhammed Ben Rahhal submitted a petition to the Senate for the establishment of an Islamic university in Algeria, to counteract the decadence into which Algerian Islam had fallen as a result of years of French neglect and repression. Another argument which he brought into play was the inadaptation of French education which, he said, produced déclassés made miserable because the high hopes and amibtions implanted by lycée education could not possibly be met.[4]

His proposal was taken up by the administration in modified form in the late 1890s and early 1900s, with the revitalization and improvement of the médersas and the creation of a new division for advanced courses at the Thalbiyya Médersa in Algiers. But, contrary to Ben Rahhal's wishes, the revived médersas remained under tight administrative control, as did the officially sponsored Islamic cultural renaissance of which they were to be a center.

Ben Rahhal's proposals for educational reform brought him to the attention of French scholars, who invited him to address the Congress of Orientalists at Paris in 1897. His speech there was a remarkable reflection of the state of Algerian Islam at the time, and a perceptive warning. He was unrestrained in his upbraiding of the Muslim

[3] On M'hammed Ben Rahhal, see Gilbert Grandguillaume, *Nédroma, l'évolution d'une medina*, Leiden, 1976, pp. 177-186; and Charles-Robert Ageron, "M'hammed Ben Rahhal, une conscience inquiète dans une Algérie en mutation," in Charles-André Julien, ed., *Les Africains*, Vol. 8, Paris, 1977.

[4] M'hammed Ben Rahhal, "Étude sur l'application de l'instruction publique en pays arabe," *Bulletin de la Société de Géographie d'Oran*, Tome 7, Fasicule 33, avril-juin 1887, p. 119. An important factor in the decline of Arabic education in Algeria was the emigration of scholars. The famous Tunisian scholar, Muhammad Bayram V, passing through Algeria in 1878, remarked that "Algerians who have undertaken advanced studies in the Orient do not return to the country." See Henri Perès, "L'Algérie vue par deux voyageurs musulmans en 1877-1878," *Revue Africaine*, 76, pp. 259-270.

world for technical and educational backwardness. Yet he also had criticism for the West, much of which, one suspects, was shared by his audience:

> To see the ravages caused by the dislocation of the family, the depravation of morals, alcoholism, malthusianism, stockmarket speculation, overwork, the unfettered love of wealth, outlandish amusements, immoderate indulgence, licentious liberty, one ends up by asking oneself which is the sicker of the two, and if Islam might not be for the Christian world a refuge and a branch (to grab on to) to save oneself.[5]

He lashed out against those Europeans, such as many of the Algerian settlers, who ridiculed and denigrated Islam without knowing anything about it. But he had praise for those who made a sincere effort to understand Islam and who spoke out courageously against malicious and ignorant detractors.

The growing influence of such scholars in the formulation of colonial policy gave him the hope that a new and honest dialogue could be initiated between the Muslim world and Europe. Looking back upon his concluding remarks, one has the sense that he had seen through to the core of the Algerian colonial dilemma. He told the Congress:

> Let the discussions be loyal, free of hidden calculations and partisanship, because as soon as they see behind their scholars the hand of the foreigner or any sort of hidden calculation, the Muslim masses will enter into defiance, and no longer follow them, no matter how great and venerated. . . . The twentieth century will see the solution to the problem by a catastrophe or by peace. Catastrophe if Christianity persists in its hostility to Islam, peace if she holds out a helping hand. . . . If the Muslim world does not civilize itself with France, it will civilize itself against her and in spite of her.[6]

9.2 Algerian Islam and French Colonial Expansion

Ben Rahhal's plea for change in 1892 came at an opportune time, for there were many factors working in favor of a major change in French Islamic policy. One was the metropolitan reaction against the autonomist aspirations of the settlers, in the wake of which Governor-

[5] M'hammed Ben Rahhal, "L'avenir de l'Islam," in *Questions diplomatiques et coloniales*, 12 November 1901, p. 545.

[6] *Ibid.*, p. 548.

General Tirman, who had overextended himself in their support, was obliged to resign in 1891. As the metropolitan government began to reassert itself in Algerian affairs, the Muslim notables stood as logical allies. The vindication of the qadi of Miliana before the Senate was a dramatic expression of this alliance between the Muslim religious elite and the colonial state.

The second factor was the revival of French imperial expansion in North and West Africa, in which Algeria was a pivot both geographically and culturally. Beginning in 1889, the French launched their drive into the Western Sudan, reaching Timbuktu and overcoming Tukolor resistance by 1894; defeating the Sudanese adventurer, Rabih, near present-day Ndjamena in 1900; and gradually extending their control to the remote areas of Chad, Niger, Upper Volta, Soudan (later Mali), and Mauritania from 1900 to 1912. In 1906 they began their penetration of Morocco, and by 1912 proclaimed it a French protectorate.[7]

Mhammed Ben Rahhal pointed out the implications of this expansion for French Islamic policy in 1887, when he translated a piece about the sixteenth-century Moroccan Sultan Ahmad al-Mansur,[8] who sent an army across the desert to capture Timbuktu and destroy the Songhai Empire. The translation was published in the bulletin of the Geographical Society of Oran, a major promoter of French expansion in Morocco and West Africa. In presenting it, he argued: "With a clear and effective policy, we can easily pass ourselves for the defenders and champions of Islam. . . . Masters of Islam, and disposing of millions of warlike soldiers whose reputation is well established, Africa will be ours."[9]

Ten years later, at the Congress of Orientalists in Paris, Ben Rahhal worked on the same theme, proclaiming the bright prospects for both France and Islam in black Africa. And Algeria, he said, was the key to Africa. Yet French Algerian policy could hardly serve as a model for the newly conquered territories, for, "when one dreams of annexing half a continent, reducing the native to misery, even by legal means, is impolitic."[10]

[7] See A. S. Kanya-Forstner, *The Conquest of the Western Sudan: A Study of French Imperialism*, Cambridge, 1969; and André Martel, *Les confins Tripolitans de la Tunisie, 1881-1911*, 2 volumes, Paris, 1965.

[8] Muhammad al-Saghir Ben al-Hajj 'Abdallah, "Nuzhat al-hadi bi-akhbar muluk al-qurn al-madi."

[9] M'hammed Ben Rahhal, "Le Soudan au XVIème siècle," *Bulletin de la Société de Géographie d'Oran*, Tome 7, Fasicule 35, October-December 1887, pp. 320-321. A prominent link between Oran and the "colonial party" was the deputy Eugène Étienne.

[10] Ben Rahhal, "L'avenir de l'Islam," p. 550.

Over the twenty-five years from 1887 to 1912, France did indeed annex nearly half a continent, extending from Rabat to Brazzaville, from Dakar to Abéché. These conquests gave Algerian Muslims opportunities as soldiers, interpreters, teachers, or secretaries.[11] Because Arabic was the national language of Morocco and the lingua franca for correspondence in West Africa (until Governor Ponty decreed otherwise in 1911, in an attempt to stem the spread of Islamic influence), the Algerian médersas stood to contribute a good deal to imperial administration. Along with a handful of Écoles Arabes-Françaises located in small, backwater towns,[12] they were the only Algerian schools with a bilingual and bicultural curriculum essential to the formation of interpreters and secretaries.

In the 1880s, when the médersas' only apparent role was to train Algerians for posts in the Muslim judiciary, which were rapidly being eliminated, they barely survived from one budget to the next, and were regularly branded by settler politicians and publicists as "foyers of fanaticism" and "dens of vice," though with an enrollment of only 57 students (in 1885) they would hardly have seemed a major threat to public security. By 1906, médersa enrollment had quadrupled to 238. Elegant new Moorish-style structures had been built for the médersas of Algiers and Tlemcen, and that of Constantine was being refurbished.

A number of French orientalists, including William Marçais, Alfred Bel, Edmond Doutté, and Octave Houdas, were drawn into the médersas as teachers and administrators. In 1905 the French were confident enough to display this new Islamic establishment to the outside world by hosting the International Congress of Orientalists at Algiers. Moreover, the Algerian médersa concept was exported to Soudan and Mauritania, thanks especially to Octave Houdas, who shared Ben Rahhal's fascination with Timbuktu.[13] Eventually, six médersas were established there, staffed to a large extent at first by Algerians.[14] For the zwaya clerics of Mauritania, just as for the urban

[11] See note 2 above.

[12] Because of settler opposition, the Écoles Arabes-Françaises had been eliminated from the larger towns by the 1870s. See Ageron, *Les Algériens*, pp. 319-320; and also Turin, *Affrontements culturels*. Conceivably their continued existence in the smaller, more out-of-the-way towns contributed to a lesser degree of cultural polarization there than in the cities, which were torn between the lycée and the médersa.

[13] Houdas translated several works on Morocco and, with his son-in-law, Maurice Delafosse, the famous *Tarikh al-fattash* of Timbuktu. For a touching description of Houdas's reltionship with Shaikh Sidiyya of Mauritania, see Louise Delafosse, *Maurice Delafosse, le Berrichon conquis par l'Afrique*, Paris, 1976, p. 322.

[14] Paul Marty, "La médersa de Saint-Louis," *Revue du monde musulman*, 28, September 1914.

scholars of Algeria, the médersas were crucial in establishing a connection with the colonial state and access to government employment.[15]

Some of the most fascinating products of this era were the interpreters who served in West Africa. One of them, Ahmad Ben Mechkane, was on the Mizon expedition to the Upper Benue River (in present-day Nigeria) in 1892-1893.[16] He apparently played a crucial role in lobbying for a French treaty with the Emir of Yola, which was to be disowned by the French government after a storm of British protest. What most upset the British about this treaty was that it had been bought with modern arms. Although Lieutenant Mizon was ordered to withdraw in mid-1893, Ben Mechkane stayed on until October 1895, with a small group of Senegalese tirailleurs, striking up a close relationship with local Muslim scholars. It is a telling note, however, that when he first arrived in Yola, most of the local people were certain that he was a Frenchman, and some still retained suspicions even after he had sworn on the Quran ten times that he was a Muslim. The British reported that Ben Mechkane had been killed in 1900, in a clash with Rabih's forces in Bagirmi (present-day Chad), but this was evidently another Algerian interpreter, or else a mistaken report. Ben Mechkane died at home in his native Algeria a few years later, from the assortment of health problems which he had picked up in the tropics.[17]

More intriguing still is the case of Redjem, Commandant Gentil's interpreter in Bagirmi. He was the son of a good family of Constantine, holder of a baccalaureate in letters and science, fluent in both Arabic and French. And he sported a pince-nez. After allegedly meddling in local political intrigues, he made off with Gentil's cash box, heading for the Sanusi zawiya at Bir Alali, but was caught and imprisoned.[18]

In the 1890s, Algeria's importance in the French North and West African empires was probably overestimated. Morocco under Marshal Lyautey would soon take on its own line of development. And,

[15] On the most prominent of the zwaya clerics, see Charles Stewart, *Islam and Social Order in Mauritania, A Case Study from the Nineteenth Century*, Oxford, 1973.

[16] See R. A. Adeleye, *Power and Diplomacy in Northern Nigeria, 1804-1906*, London, 1971, pp. 139-156; and K. Vignes, "Étude sur la rivalité de l'influence entre les puissances européennes en Afrique équatoriale et occidentale," *Revue française d'histoire d'outre mer*, 48, 1961, pp. 52-63. To this day, Ben Mechkane is remembered with a certain consternation in Yola.

[17] J. M. Fremantle, *Gazetteer of Muri Province*, London, 1922, p. 7.

[18] General Reibell, *Carnet de route de la mission saharienne Foureau-Lamy*, Paris, 1931, pp. 337-338.

in Dakar, the attitude of the French West Africa administration toward Islam fluctuated from lukewarm tolerance to paranoid hostility.[19] Muslim courts were formally established only in Saint-Louis and Dakar. Elsewhere in West Africa, Islamic law was treated on a more or less equal footing with customary law, which meant that there was no scope for the emergence of a specialized Muslim judicial bureaucracy, and no need for schools to prepare it. Only in Mauritania and the northern parts of Soudan was the Algerian role substantial, and these were impoverished areas, far from the poles of colonial development.

But if the médersas were built with an eye on Morocco and West Africa, much of their inspiration was drawn from the flourishing centers of Islamic modernism in Tunis and Cairo. The revival of the médersas represented an attempt to revive France's Islamophile luster at a time when considerations of imperial rivalry with Britain gave a premium to developing a positive image for France in Egypt.

Muhammad 'Abduh's formula of the aggressive pursuit of technical and scientific modernization combined with moral purification were the central themes of Algeria's renaissance, and his visit to Algeria in 1903 marked a sort of consecration of France's new Islamic policy.[20] These themes, already announced by Majjawi in 1877, can scarcely be considered a novelty in 1903, let alone in 1925, when they were repeated by Ben Badis.

The critical questions were not modernism or moral purification, which colonial governors were usually quite happy to endorse. It was rather questions of attitude to the Sufi tariqas and loyalty to France which were crucial, and it is on these counts that the official renaissance of the early 1900s differed from the reformist movement of the 1920s and 1930s.

In the works of the official renaissance, such as Hafnawi's *Ta'rif al-khalaf* (1913) and Kahhul's *al-Taqwim al-Jazairi* (1911-1913), Sufi leaders were given a place of honor alongside the most staunchly puritanical of reformists, such as Mulud Ben al-Muhub. This seemed to reflect the unspoken assumption that the Salafiyya reformist movement was an affair of the urban elite, while Sufism remained

[19] Donal Cruise O'Brien, "Towards an Islamic Policy in French West Africa, 1854-1914," *Journal of African History*, 8:2, 1967, pp. 303-316; and Jean-Louis Triaud, "La question musulmane en Côte d'Ivoire, 1893-1939," *Revue française d'histoire d'outre mer*, 61, 1974, pp. 542-571.

[20] Rachid Bencheneb, "Le séjour de Muhammad Abduh en Algérie (1903)," *Studia Islamica*, 53, 1981, pp. 121-136. On his Tunisian visit, see M. Chenoufi, "Les deux séjours de Muhammad Abduh en Tunisie," *Cahiers de Tunisie*, 12, 1968, pp. 57-97.

quite appropriate for the masses, especially in the countryside. The reformists of the later period did not accept this premise.

As for the question of loyalty, it was handled in a simple and straightforward way. Virtually all of the men involved in the official renaissance were on the government payroll as qadis, muftis, or médersa professors. Those who sought an independent voice, such as the young 'Abd al-Hamid Ben Badis on his return from Tunis in 1911, were simply refused the necessary authorizations for teaching or publishing.[21]

It was not simply a question of the French authorizing only official employees to speak out. In the urban milieu, these were often the only ones who could speak out freely because of the protection which their status as functionaries gave them against arbitrary harassment by the settlers. Only when one considers this can one perhaps understand and place in perspective the seemingly blind devotion to "al-dawla," the state, so often expressed in the writings of the official renaissance. Only after World War I did the new generation of reformists demand the application of laws on the separation of church and state.[22]

The pressures under which members of the prewar reformist movement had to operate were poignantly illustrated in a letter from 'Abd al-Halim Smaia, a professor at the médersa of Algiers, to Muhammad 'Abduh, published by 'Abduh's disciple Rashid Rida. In it, he pleaded with 'Abduh to advise the editors of *al-Manar* to avoid criticism of France, for this would lead to its banning from Algeria. "We consider it a lifesaver," he wrote. "If it is cut off, life is cut off."[23]

In his own turn, 'Abduh advised his North African followers to concentrate on three points: the spread of religious knowledge, economic development through hard work and frugality, and cooperation with the French government—which meant refraining from political involvement.[24]

Nevertheless, political discontent was always just beneath the surface, often expressed indirectly or symbolically to avoid incurring official wrath. Some Algerian intellectuals simply could not tolerate

[21] Ali Merad, *Ibn Badis, commentateur du Coran*, Paris, 1971, p. 24.

[22] Ageron, *Les Algériens*, pp. 891-896.

[23] Rashid Rida, *Tarikh al-ustadh al-imam*, Part I, p. 871, quoted in Amar al-Talbi, *Ibn Badis, hayatuhu wa athatuhu* (Ibn Badis, His Life and His Work), Beirut, 1968, p. 34.

[24] Muhammad Guenanech, "L'orientation politique à l'aube de la renaissance moderne en Orient," *Majallat al-tarikh* (Algiers), Semester 1, 1980, p. 101.

the restraints. Hamdan al-Wanisi, a former médersa professor, emigrated to Mecca. He was to have a strong formative influence on the young 'Abd al-Hamid Ben Badis, whom he warned never to take a government job. 'Umar Rasim, one of Algeria's first independent journalists, took the venerable Shaikh 'Abduh to task for his masonic connections and his awe of British power, even though his newspaper, *Dhu al-Fiqar*, touted 'Abduh as "the spiritual director of this newspaper." In World War I, he would be condemned to hard labor for saying out loud what many of his more cautious colleagues doubtless felt privately.[25]

9.3 The Codification of Islamic Law

The sense of anger and frustration felt by scholars such as al-Wanisi and Rasim takes on added depth when one considers the role to which Algerians were consigned in a question which was of great importance to them: the codification of Islamic law. This project was the culmination of long-term French efforts to bring a Weberian "rationality" to the Algerian legal system. It was a project too important, it seems, to be left in the hands of Muslims.

The idea of codifying Islamic law was by no means a new one in Algeria. The idea had been discussed intermittently since 1865, when al-Makki Ben Badis had quite easily scuttled it. This latest codification effort was initiated by settler representatives on the Délégations Financières, who admitted openly that their motive was to clear up ambiguities in the law which had hampered land transactions. But the project would have made little headway without the interest of the French arabisants of the court, the law school, the Native Affairs Department, and the médersa administration. For them, this was a main chance to systematize and rationalize Islamic law, and surreptitiously introduce reforms, especially in the area of personal status.

One of the most enthusiastic was Octave Houdas, who was Inspector of the médersas. He had visions of extending the new Malikite code to Tunisia, French West Africa, and, he eagerly anticipated, Morocco.[26] The draft, he said, could easily be prepared by a few bright young graduates from the médersas. The relevant learned and influential folk would be duly consulted. And then the printing presses

[25] *Ibid.*, p. 104; and al-Talbi, *Ibn Badis*, p. 57.

[26] Octave Houdas to GGA, 10 February 1902, in *Projet de codification du droit musulman: avis des présidents des tribunaux, procureurs de la république, juges de paix et cadis*, Algiers, 1906, p. 19.

would roll, and Muslims throughout the Maghrib and the Sudan would be relieved of untold "useless litigation and futile appeals."

Robert Estoublon, who had extensive experience with Islamic law in both Algeria and Tunisia, was decidedly more insightful and prescient. He told Governor-General Jonnart that it was essential to involve Algerians in the project, for France had too long legislated "for the Muslims but not with them." And he warned against tokenism, for this would produce a project with no legitimacy in Muslim eyes. He further suggested calling on the services of learned Muslim scholars from Tunisia and Morocco, evidently having little faith in the Algerian médersas, and sensing that those with the most thorough understanding of tradition were the best qualified to reform it.[27] His advice was not heeded.

A great many of the Algerian qadis consulted rejected the idea of codification outright, seeing in it only a French design to tamper with the divine law. Some meekly endorsed codification, on the condition that it changed nothing. Henni Ben Sayah, a qadi and a politician of some stature, was more forthright. He said, in effect, that it would be a waste of time.[28] He was appointed to the commission.

There were, however, some exceptions. 'Allawa Ben Sassy, now qadi of Aumale, one of the "conspirators" of 1881, hailed codification as "a felicitous idea inspired by the exigencies of modern progress." Mahi al-Din Ben Khedda, qadi of Médéa, criticized the obfuscations of the medieval scholars, and called for codification based on the Quran and the Sunna, and on all four schools of law, taking into account current interests and usages.[29] This was nothing short of radicalism.

But the most striking endorsement came from Yahaya Gherramou, Qadi-Notary of Tizi Ouzou in the Kabylia, where French juges de paix had the task of upholding Berber customary law. He insisted that the new code apply to all Algerians, regardless of whether they followed Maliki, Hanafi, or Ibadi rites, or Kabyle qanun.[30] It was precisely this which upset Émile Larcher, a prominent judge on the Algerian bench and the foremost opponent of codification. He saw it as yet another misguided step down the path to Arabization.[31]

A commission was named in 1906, consisting of sixteen French administrators and jurists, and five Algerians—'Ali Mahi al-Din and

[27] R. Estoublon to GGA, 18 July 1902, in *Projet de codification*, p. 23.

[28] Henni Ben Sayah, response to circular, 8 July 1904, in *Projet de codification*, p. 158.

[29] Responses by Allawa Ben Sassy, 4 July 1904, and Mahi al-Din Ben Khedda, 6 July 1904, in *Projet de codification*, pp. 88-90.

[30] Response by Yahaya Gherramou, 16 July 1904, in *Projet de codification*, p. 108.

[31] Response by E. Larcher, 5 July 1904, in *Projet de codification*, p. 113.

Muhammad Sharif Ben 'Ali Sharif, both délégués financiers; Henni Ben Sayah (also a délégué financier) and 'Abd al-Rizaq Lacheref, both qadis; and Shaikh al-Majjawi of the médersa. In 1907 Mustafa Ben Ahmad al-Cherchali, a former qadi and now a professor of law at the médersa of Algiers, was added, replacing a French member. The formula presents echoes of the Gastambide Commission in 1865—on which Ben 'Ali Sharif's father had sat. And, as Marx commented on Hegel's observation that history repeats itself: "He forgot to add that the first time is tragedy, the second time is farce."

In 1865 the issue had been autonomy for the Muslim courts and schools. In 1907 the most outstanding debate was the age-old question of the willingness of brides and how the qadi was to ascertain it. Marcel Morand, head of the commission, demanded a personal appearance, unveiled. 'Ali Mahi al-Din, a politician who had public opinion to answer to, was strident in opposition, insisting that no man, least of all the husband to be, should see the bride. The bilingual and modernist qadi Lacheref claimed, wrongly, that the article in question had simply been copied from the Egyptian code of 1875, and was in perfect harmony with the usages in his oasis home of Biskra. Both qadi and politician, Ben Sayah noted that in most cases the bride did appear in court, but that "a few families did not permit this." Luciani, the Director of Native Affairs, depicted himself as defender of the humane and equitable Islam of the days of the first caliphs, and castigated Mahi al-Din for supporting the kind of barbarous custom which had led Islam to its present state of decadence.

The venerable Shaikh al-Majjawi, the only one present who spoke no French (Lacheref was his interpreter), saw no reason for either the hysteria of Mahi al-Din or the moralistic breast-beating of Luciani. He put forth a compromise which read:

> It is not necessary that the spouses appear simultaneously, given the sentiments of modesty which prevail. The man can appear in person or by authorized representative. As for the woman, there is a distinction which needs to be made: *if she is of superior condition*, it is the qadi or his assistant who should go to the family's home to prepare the document confirming her assent and that of her guardian.[32] (Emphasis added)

Just as a half century before, the "woman question" was a question of class. For the colonial Algerian political elite, which 'Ali Mahi al-Din represented, marriage had an essential role in political and eco-

[32] *Projet de codification, procès verbaux des séances*, Vol. 3, Algiers, 1907, Session of 18 June 1907, pp. 88-100.

nomic strategy, matters far too important to be left to the whims of an impressionable young girl. In the end, as usual, the French rallied to the views of the tribal chief.

And also in the end, the whole debate was, as Ben Sayah had predicted, a futile exercise. By 1919 the "Code Morand," as it was inevitably called, was quietly filed away, a relic of an age gone by. Postwar electoral reforms ironically gave the conservative rural elite, ever more depended upon by the administration, a more powerful influence. And as for the young modernist scholars who might have offered support to the project, World War I had broken their faith in the administration.

9.4 The Algerian Intellectuals and World War I

Shaikh al-Majjawi died in 1913, a death uncannily parallel to that of 'Abd al-Hamid Ben Badis on the eve of World War II in 1940. Both were first and foremost social and educational reformers, and placed politics second. Their deaths, prior to the political watersheds of war, allow the historian to focus on their efforts on social and educational reform. Those who lived through the wars in Algeria, especially World War I, faced agonizing decisions, and had to make them in an imposed silence. It is more difficult for the historian to do them justice.

In 1914 French attention shifted back from Africa to Europe and the Middle East. If many Algerians could accept their role as auxiliaries in the conquests of Morocco, the Algerian Sahara, and the Western Sudan, since they could see it as *Algerian* expansion, the war against Turkey in particular posed a dilemma because of historical and religious ties. Many of the younger educated Algerians looked to Turkey as a political and cultural model. But counterbalancing this were memories of 1871. Then, when France lay defeated, the Algerians had risen in revolt only to be brutally suppressed, and to be punished with twenty years of economic exactions, political subjugation, and cultural humiliation. They could ill afford to make the same mistake again.

The leaders of the official clergy were quickly pressed into serving the war effort by bestowing blessings on the Allied cause with patriotic proclamations and speeches. But the role of the official clergy seems to have been quite overshadowed by that of the Sufi tariqa leaders, for it was they who had the widest popular influence. In many cases, they not only circulated pro-French proclamations to their followers, but they openly lent their influence to recruitment efforts and sent their own sons off to the trenches. Their influence

was reportedly felt even in the prisoner-of-war camps in Germany, where they helped to maintain loyalty to France in the face of a barrage of Pan Islamic propaganda.[33]

The official clergy, and the urban notables in general, were never noted for their military tradition, and do not seem to have played an active role in military recruitment. Moreover, a commitment to Islamic modernism made many of them ambivalent about the war with Turkey. Thus neither by family tradition, nor by philosophical commitment, were they inclined to send their sons off to the trenches. Already in 1912, there had been a large-scale movement of migration to the Middle East, mainly from the strongly traditional town of Tlemcen, in protest against the imposition of conscription on Algerian Muslims.[34] During the war, some of the most prestigious urban notable families kept their draft-age sons out of Algeria, studying in the East—the most conspicuous being 'Abd al-Hamid Ben Badis, the future reformist leader.

As for the masses, the official clergy had little influence on their attitude to the war. It is even conceivable that the lukewarm attitude of the urban notables, by a sort of inverse psychology, helped to popularize the war among the tariqa leaders and the masses. For them, the war at least gave an opportunity for défoulement, the unleashing of pent-up emotions in the oppressed colonial subject, so acutely described by Frantz Fanon. They might have sensed too that the war would bring change, and that change could at least not make things worse.

The French authorities in Algiers were quick to suspect urban spokesmen of disloyalty, for the Tlemcen hijra of 1912 was still fresh in their minds. The active collaboration with the Germans of a number of Tunisian 'ulama intensified French suspicions.[35] Thus 'Umar Ben Qaddur, editor of the independent newspaper *al-Faruq* was exiled to the oasis town of Laghouat, and 'Umar Rasim, editor of *Dhu al-Faqar*, was arrested and sentenced to hard labor.[36] As for the official clergy, they churned out turgid patriotic sermons, but more out of fear and ingrained bureaucratic habit, one suspects, than out of commitment. It is notable that these men who, before the war, had shown such a penchant for publishing, produced no books or pam-

[33] Jean Mélia, *L'Algérie et la guerre, 1914-1918*, Paris, 1918, pp. 231-235.

[34] Ageron, *Les Algériens*, pp. 1079-92; and Charles-André Julien, *Une pensée anticoloniale*, Paris, 1979, pp. 25-32.

[35] Ageron, *Les Algériens*, p. 1,177.

[36] Al-Talbi, *Ibn Badis*, pp. 56-57.

phlets developing a political and ideological rationale for the Allied cause.

While the Algerian administration concentrated its energy on the suppression of dissent, the metropolitan government took great pains during the war to respect Muslim religious sentiment, particularly in catering to the needs of North African troops in France.[37] Out of these efforts at maintaining troop morale, and the desire to cultivate a loyal Islamic establishment, there grew an attempt to create a sort of Pan Maghrib official religious organization. The first step toward this was the creation of the Société des Habous et des Lieux Saints de l'Islam, presided over by Qaddur Ben Ghabrit, a Tlemceni who had made his career in French service in Morocco.[38] Founded in 1917, its original purpose was to oversee pilgrimage operations and to cater to the welfare of North African pilgrims in Mecca. After the war, it would be involved in the construction of a mosque and the establishment of an Islamic Institute in Paris.[39]

Strongly committed to progress through education, Franco-Muslim cooperation, and political gradualism, Ben Ghabrit in a sense continued the official renaissance into the postwar period, along with another stalwart of the movement, Mulud Ben al-Muhub of Constantine, who was named mufti of Paris.[40] In effect, the movement's survival was linked to its transplanting in Paris, where its moderation could still be appreciated by liberal politicians and ministry officials. Such a movement could not survive in Algeria, where there was a growing polarization between administration backed "maraboutism" and nationalist reformism.

The encouragement given by the Algerian administration to the official renaissance had been an effort to coopt a nascent intellectual elite of Islamic modernists, to channel potential dissent along acceptable lines. For Algerian participants, this had presented an opportunity for open expression such as had not previously been available to them. The awkwardness of this compromise became evident in the wartime situation, when the Algerians saw how limited and condi-

[37] For examples, see Mélia, *L'Algérie et la guerre*, pp. 115-125.

[38] Ageron, *Les Algériens*, p. 1,200.

[39] *Al-Najah* (Constantine), 9 December 1930, gives an historical summary. On the opening of the Paris mosque, presided over by Marshal Lyautey, see Bulletin du Comité de l'Afrique Française, *Renseignements coloniaux*, 15 July 1926.

[40] Léon Lehuruaux, *Musulmans 1938: un mariage arabe dans le Sud Algérien*, Algiers, 1938, p. 42. The book contains a picture of the elderly Shaikh Ben al-Muhub, addressing the Ben Gana-Ben Smaia wedding party over a microphone. He was complaining of the impatience and opportunism of the younger generation.

tional their freedom of expression was, and the administration questioned their commitment to France and recognized that the official clergy's popular influence was negligible. In addition, the French occupation of Syria after the war struck at what had for so long been both a critical refuge and a creative center for Algerian intellectuals, ever since the Amir 'Abd al-Qadir had settled in Damascus.[41] Now there was no longer the possibility of protest by migration, no alternative to submission or defiance.

The main thrust of French Islamic policy in Algeria after the war was to be to curry the favor of the major Sufi shaikhs, thought to have far more popular influence than the official clergy, in addition to seeming almost limitlessly naive and manipulable. But to assume that Algerian Islam could be somehow controlled through either the official clergy or the Sufi shaikhs was to follow the orientalist's oversimplification of Islam, the division between 'ulama and marabouts.

As should have been only too evident to the French, the central question was not one of religious sociology—'ulama or marabout, orthodox or Sufi—but one of political attitude. Islam, just as Christianity, has a rich tradition of protest and dissent, and I have already touched on numerous examples of this, ranging from open revolt to emigration to more conventional political protests.

The more radical protests came, not from one category, 'ulama or marabout, urban or rural, but rather from those leaders who stood outside the colonial hierarchy, who chose not to cooperate with the colonial state, either on principle or after bitter experience had taught them that the system was fundamentally unjust and corrupt. Algerian Sufi tariqas had a long history of rebelliousness, though by no means were all tariqas dissident. In the heavily centralized judicial system, when a magistrate was disciplined or when a student could not find a post, it was only natural that he should aim his resentment against the state. Dissident shaikhs and disgruntled qadis made up a sort of religious and intellectual counter-elite, and sustained a counter-ideology, influenced partly by such external currents as Pan Islam, but also with deep roots in local traditions, expressed in familiar themes and symbols.

Just as in previous crises, the war brought a number of these figures to the attention of the French administration. One of them was the qadi of the oasis town of Tolga, near Biskra, who had been sent there as a disciplinary measure. A letter of his to a Young Algeria

[41] One of the leading figures of Damascus intellectual life was Tahir al-Jazairi. See Albert Hourani, *Arabic Thought in the Liberal Age*, New York, 1962, p. 222.

activist in the capital was intercepted by the French. Dated 1 November 1914, precisely forty years before the outbreak of the revolution, it proclaimed: "I hope there will be a great revolution which we can call the Algerian Revolution. The brothers are joyful. The lips of time smile upon us." According to the administration, his son and a few friends had been distributing anti-French tracts in Biskra, decorated with the Islamic crescent and star.[42]

Another example of such a figure was the anonymous author of a tract found by the French in suppressing the anti-conscription rebellion in the Beni Chougran hills near Mascara in 1917. Its title was "Akhbar dhat al-tasis fi ma yaqa' bain al-muslimin wa-l-fransis" (Well-Founded News on What Will Happen Between the Muslims and the French). It was credited to the late eighteenth-century Oranais historian Shaikh Muhammad Ibn Abi Ras al-Nasiri.[43]

It had its roots in a well-established tradition of prophecies circulated by manuscript, which purport to be of considerable age, and predict the course of contemporary events, giving credence to their predictions by citing facts which the author knows but pretends to predict. The content of such documents is historical, though the mode of discourse is that of a soothsayer. Apparently, manuscripts similar to this one had been found in many parts of the Oranais since about 1900. Different versions had additions or omissions made over the course of time, and particular references to events or problems or personalities of local importance could be added by the copyist-editor as he saw fit.

Particular details in this version suggest that the writer had been a judicial official, for he devoted special attention to criticizing French legal policy and their maltreatment of conscientious qadis. Although the document is traditional in form, the author seems to have a wide perspective and to be well informed about international affairs, from the Anglo-French showdown at Fashoda to German policy in Morocco. His analysis of problems of internecine conflict among the Algerians during the resistance period seems clear and insightful. In short, the writer was not a mahdist mystic simply proclaiming the imminent collapse of the sky, with an arcane cabalistic explanation. He was, rather, a grim Khaldunian realist, explaining in clear and logical terms why, in 1917, the sky was indeed metaphorically collapsing.

[42] Octave Depont, Report on the Aurès Insurrection, quoted in Ageron, "Les troubles insurrectionnels du Sud Constantinois, novembre 1916-janvier 1917," *Cahiers de l'Institut d'Histoire de la Presse et de l'Opinion*, No. 5.

[43] In 9 H 16.

His conclusion was eloquent:

> There will be catastrophe and anguish and grief and starless darkness, with day turned into night, and the upheaval of the age. Those who held high position will be laid low, and God's vengeance will be swift for the tyrants. There is no way to escape this punishment, no force, no contrivance, no trickery. I see some of the 'ulama put themselves in the service of the ignorant and wealthy, and sons of the virtuous dashing off to serve the Christian world, and showing their love for it with magnificent gifts. Alas, the saints have disappeared.[44]

This is a forceful condemnation of the compromises of the Algerian elite, the venal scholars, and the ambitious Westernized young men, who jumped on the bandwagon in the heyday of imperial expansion in the early 1900s, accepting for their services not only material rewards but also a substantial, though carefully circumscribed, respect for their culture. Wartime repression and, after the war, failed reforms, an increasingly inept Islamic policy, and a transparently manipulative Berber policy made those gestures seem hollow in retrospect, and brought to the surface the hidden calculations which had underlain the Franco-Muslim dialogue from the outset.

[44] Anonymous, "Akhbar dhat al-tasis," in 9 H 16.

CONCLUSION

The Study in Summary

In the structure of relationships between politics and religion in Islam, the point of maximum stress is located in the office of qadi, a state-appointed religious judge. In a world which is less than perfect, when political authorities pursue their quest for power as an end in itself, where factions within the community are intent on nothing so much as their own advantage, the qadi has a nearly impossible task. It is no wonder that a popular tradition has it that one day the Prophet proclaimed that a camel could pass through the eye of a needle more easily than a qadi could enter heaven.

What saved the structure itself, and indeed gave it its enduring character, was a certain equilibrium between religious scholars and the state, made possible by the consultative process and by the autonomy afforded to the scholars through the religious endowments. A qadi might succumb to the pressures of the ruler, without its affecting the autonomy of the religious scholars as a group.

Under the colonial state in Algeria, these critical features of the system were decidedly altered. The 'ulama were deprived of the mainstay of their autonomy, the religious endowments, at the very outset. French insistence on adherence to standardized procedures and a well-defined hierarchy of appeal deprived the judicial process of its flexibility.

The imposition of formal structures and procedures created the most serious problems in the West, especially in the region of Mascara, which had been the center of 'Abd al-Qadir's Algerian state. In Chapter 2, I examined the highly flexible character of the appeals process before the intervention of the colonial state, and also explained the position of the sharifian aristocracy of the Mascara region. The impact of the imposition of formal structures was described in Chapter 5. The problem lay in the severity of the conflicts which arose, and the inadequacy of formalized judicial structures for coping with them, and also in the determination of many colons and also French judicial officials not to tolerate a Muslim judicial system independent of the French courts. In Constantine, such severe clashes did not occur, partly because the East had not been as polarized by the resistance struggle, and partly because of a well-established pat-

tern of influence of the state in judicial affairs, established in Ottoman times and carried over into the colonial period.

The crisis of judicial affairs in the West led to a sudden and quite drastic subordination of the Muslim judicial system to the French courts through a channel of appeal. The old process of consensus formation through the majlis was thus deprived of any official recognition, and yet its substitute, the appeal to the French courts, was virtually inoperative, given the enormous costs of appeal and the at best superficial understanding of Islamic law possessed by French judges. The tensions thus caused fed the already deep resentment of French colonial rule, and precipitated a revolt in 1864-1865, under the leadership of local religious figures.

It was at this point that the 'ulama of the city of Constantine began to assume a critical role in the relationship between Algerian Islam and the French colonial state, accepting the French stress on formal rules, but insisting that the Muslim judicial and educational systems retain a degree of autonomy. The French made concessions on the question of education, but the channel of appeal to the French courts was maintained. The ensuing bureaucratization of the Muslim judicial system took place under strict subordination to the French courts.

In looking at the responses of Muslim judicial personnel to the onset of bureaucratization, one can detect differences between East and West, with both upward mobility within the judicial hierarchy and geographic mobility from place to place being more common in the East. The mobility of these itinerant qadis in the East helped to give a certain unity to the Eastern judges as a group, and beyond this to the Muslim urban notables as a class. In the West, religious leaders, including judges, tended to retain a more localized social base.

Yet it was Westerners who contributed more to the emergence of unity at a national level. Many members of 'Abd al-Qadir's family, exiled from their Mascaran home on a political pretext, became itinerant qadis par excellence, moving through the courts of both East and West. One of their in-laws, 'Abd al-Qadir al-Majjawi, was the first exponent in Algeria of a modernist Islamic reformism.

There seemed to be, in the late 1860s, the potential for the development of an Algerian religious establishment, in both the educational and judicial spheres, which retained a degree of autonomy from the colonial state and promoted social and cultural change within a framework of Islamic reformist values.

But there were great stumbling blocks to the realization of this potential. One of them is illustrated by the experience of the advisory councils on Islamic jurisprudence set up in 1854 and again in 1867.

The type of jurist chosen for this council was the forward-looking, reform-oriented, if not reformist, scholar, whose background and views I discussed in Chapter 4. The problem of this group is that they had a rather narrow social base, with their influence confined mainly to the towns. And also, while the French had done their best to annihilate the political independence of the tribes, they continued to cater to the conservative social sensibilities of the chiefs. Rules on the minimum age of marriage were used as a tool to discipline qadis, rather than to put an end to the practice of child marriage.

Another stumbling block lay in the politics of the colonial town, where the independence of the qadi, assured by his status as a civil servant, was a galling problem to local colon potentates. Strict subordination of the courts and schools to central government authority was the price to be paid by the Muslim urban notables for an alliance with the colonial state in the face of threats from the colons. Renunciation of ambitions to local political power was the concession made to colons to insure the preservation of the courts. This, in a nutshell, was the compromise to emerge from the crisis years of the 1880s, analyzed in Chapter 8.

When the French began to expand the scope of the official Islamic establishment in the 1890s, the basic operative principle of strict subordination to the colonial state was already well in place. The Algerian Muslim notables hoped that the expansion of the scope of the Islamic establishment into the educational and religious spheres would prove an occasion for dialogue and for beginning a process of social and cultural change in Algerian society within an Islamic framework. Yet the factor which had prompted this expansion in the first place, and which Algerian Muslim leaders themselves had capitalized on, was France's colonial expansion in West Africa and Morocco. The most rewarding careers for young Algerians with a médersa education were as servants of the French colonial state on its new Muslim frontiers. Within Algeria, in the meantime, the most important decisions about Islamic law and education had been placed firmly in the hands of French specialists.

The onset of World War I marked the end of hopes for dialogue, and it demonstrated that the Islamic establishment not only had no real autonomy from the French, but that it had very little real influence.

The most revealing testimony to this is in the popular image of the qadi which one finds in the early twentieth century. It is captured in a discussion by an assembly of saints debating the fate of Algeria

on the eve of colonial rule, as imagined by a group of storytellers near the town of Blida. Of the qadis, one saint predicts:

> The qadis which the infidel will choose for us will sell justice for hard cash. What will become of the good Muhamaddan law? The qadi will arrive drunk for the session. "Oh, lieutenant and successor of the Prophet," the parties will cry to him, "judge us according to the law which came down from heaven with the Quran." He will rebuke them in a snarling tone: "Me," he will say, "I only judge according to the laws, decrees, and regulations which we get from Mr. So-and-so. Kindly disappear from my presence, or I will apply to you the penalty of imprisonment."[1]

The vices of venality and partiality to drink were part of the old stereotype of the qadi, but we find here a new problem superseding these: that the qadi had become so entangled in the regulations sent down by an anonymous French official in Algiers that he was no longer a recognizably Islamic figure.

French policy toward the official Islamic establishment in Algeria left a heritage of great bitterness among the Algerians, and above all among those who were most affected by this policy, the urban notables. This bitterness was captured in a statement put out by the moderate nationalist group, Amis du Manifeste de la Liberté, just after World War II. It argued that, in its policy toward the médersas,

> the dominant desire of the government has been to educate loyal officials who, however, are lacking in culture and humanism. In the whole vast plan which has been conceived to devalue Muslim thought and soul, it is indeed true that the set-up of the Algerian médersas has been in a way one of the greatest successes of colonialism—just as has been the monopolization of the lands and the proletarianization of the popular masses.[2]

The Study in Comparative Perspective

The image of the storytellers of Blida, of the qadi who only judges "according to the laws, decrees, and regulations which we get from Mr. So-and-So," captured the very spirit of the Algerian Muslim judicial system, and offers a critical insight on the nature of modern European colonialism. Through bureaucratization, the office of qadi

[1] Jean Desparmet, *L'oeuvre de la France en Algérie jugée par les indigènes*, Algiers, 1910, p. 14.

[2] *Alger Républicain*, 20 July 1946.

had been "desacralized,"[3] torn from its traditional and religious roots, and planted in a foreign soil of rules and decrees, fixed salaries and fee schedules, exactly ordered ladders of promotion, inspection tours, and reports in quintuplicate.

What is striking—one might even say disturbing—in this vision of the Algerian qadi is that he has become so thoroughly desacralized. Like many of his peers in quasi-traditional offices elsewhere in the colonial world,[4] he had learned to wend his way through the bureaucratic maze set up by the colonial masters. But he seemed to have learned so well that he had in the process forgotten his traditional role. He could no longer effectively play a double game, cope with his traditional role as well as his bureaucratic one, even if only in half-convincing fashion. He could no longer even go through the motions of judging a case in the traditional manner.

Because the Algerian qadis of the twentieth century, and along with them the official Islamic scholars and clergy, so clearly lacked in popular legitimacy, it is all too easy to write them off as ineffectual cogs in the Algerian colonial system, whose only real importance was to serve as a reminder that the Algerians did have an Islamic identity. But this very ineffectuality needs to be read in wider terms of the Algerian colonial system, with the peculiar patterns of articulation and disarticulation which have contributed to making the Algerian experience quite different from that of other colonized societies, and yet in some critical respects similar.

There are three major aspects to the importance of the official Islamic establishment, and particularly its judicial component, within the colonial system: (1) in maintaining political disarticulation at the local level, preventing the development of a pattern of cooperation and transaction between colon and Muslim leaders, which might have made possible gradual and substantive political change; (2) in establishing a strong relationship between the colonial state and local religious leaders, and, through them, the stratum of urban Muslim notables of which they were a part; and (3) in the substantial internal unification of the Islamic establishment, and the consequent close identification which developed between Islam and the central state.

The problem of political disarticulation at the local level contributed greatly to the pressures which were to culminate in the Algerian revolution of 1954–1962, and the pressures made it impossible for

[3] Georges Balandier, *Political Anthropology*, trans. A. M. Sheridan-Smith, London, 1967, pp. 163-172.

[4] Lloyd Fallers, *Bantu Bureaucracy*, Cambridge, 1956.

many Algerian Muslim religious leaders to continue to work under the colonial state as the nationalist movement built up its momentum in the 1920s and 1930s. With the achievement of independence in 1962, the problem of disarticulation was liquidated, with the departure of the colons, and now the pattern of strong religious unification under the aegis of the central state reasserted itself, only with a new Algerian state and with reformist Muslim leaders who had contributed to the struggle against colonial rule.

These three aspects of the historical importance of the Algerian colonial Islamic establishment can best be seen through comparisons with the experience of other Muslim societies under colonial rule.

Let us take, to begin with, the problem of political disarticulation at the local level, that of the colonial municipality. Here the qadi's role becomes clear when we look at the case of Senegal.[5] In the major coastal towns of Saint Louis and Dakar, there were qadis, and in fact the office had been originally modeled after the Algerian example. Yet, in Senegal, Islamic law did not prove to be an obstacle to the acquisition of full political rights by the Senegalese inhabitants of the major coastal towns.

The explanation for this seems to lie in the fact that the Senegalese qadi, and particularly the qadi of Dakar, fit into the political patronage system of the city, with the mayor having a major role in the nomination of the qadi. Since Africans, mulattoes, and Europeans all voted on the same choice of candidates, the qadi served as an essential link between the mayor and the African voters, who were largely Muslim.

In Algeria, because the qadiship was a bureaucratic office, it lay outside the control of the colon mayor, and so, instead of being a potential channel of influence over Algerian voters, it was an obstacle to influence and thus, as far as the colon mayor was concerned, a threat. It was this seeming impossibility of alliances at the local level which made the colons so adamantly opposed to any sort of gradual reform. From the 1880s up until 1945 Islamic law was integral to the rationale for denial of full political rights to the Algerians, and, in this sense, it was an obstacle to the sort of gradual accession to political power by the colonized which had occurred in Senegal.

One factor in this contrast between Algeria and the coastal towns of Senegal was the existence, in Senegal, of shared economic interests, as the Senegalese townsmen and the colons shared in the enter-

[5] Allan Christelow, "The Muslim Judge and Municipal Politics in Colonial Algeria and Senegal," *Comparative Studies in Society and History*, 24 (1982), pp. 3-24.

prise of the economic penetration of the interior. In Algeria the major economic interest of the colons and the Algerian notables was not commerce, but land, and this set them at odds with each other, especially in the new colonial towns.

This strong disarticulation in political relations at the local level was linked to a correspondingly strong articulation between urban Muslim religious leaders and the central colonial state through the structure of the official Islamic establishment. This needs to be looked at from two rather different perspectives: on the one hand, the adaptiveness of the religious leaders to changes brought about by the colonial state, and, on the other, their strict subordination to that state.

In examining adaptiveness to change, and alliances between a modernizing state and Muslim scholars in Tunisia, Arnold Green stresses the importance of social mobility in determining the attitudes and choices of the scholars. He finds that scholars moving from the provinces to the capital, and from lower to higher positions within the status hierarchy of the capital, were the ones most likely to cooperate in the process of reform, whether under Khair al-Din Pasha in the 1860s or under the French in the 1890s. The old established families of Tunis tended to look askance at the expansion of the state apparatus.[6]

In looking at Algeria, one sees the importance of patterns of social mobility through service to the state, for where those patterns were weak, in the West, the response of Muslim scholars to state intervention seemed to be largely passive. The judicial families of Tlemcen and Miliana shared the conservative attitudes of the old established 'ulama families of Tunis.

In the Constantinois, however, there was an established pattern of social mobility, and the adaptation of Muslim scholars to the state's intervention was a correspondingly active one. It was active in the sense that it was accompanied by an effort to rethink Islamic values in modern terms and revitalize Islamic and Arabic education with modern methods, and in the sense that the 'ulama of Constantine made a concerted effort to preserve a degree of autonomy in the process of changing.

When it turned out that the assertion of state control, rather than change, was the primary concern of the French, it was the socially

[6] Arnold Green, "Political Attitudes and Activities of the 'Ulama in the Liberal Age: Tunisia as an Exceptional Case," *International Journal of Middle East Studies*, 7 (1976), pp. 209-241.

mobile scholars who proved the most adaptable. The prime example is the Ben al-Muhub family, with the father, Sa'id, starting out from a zawiya in the mountains in the 1850s, and his son, Mulud, eventually working his way up to be mufti of Constantine and eventually mufti of Paris. Salah Ben Bu Shanak's emergence, with official blessing, as a provincial political leader in the late 1880s could be argued to demonstrate the same principle. Yet there were clearly also other socially mobile Muslim judges who chafed under the tight control of the colonial state, and came in the end to reject it, such as Sa'id Ben Shettah. In his case, we can see how geographic mobility, around the pivot of the provincial capital, helped to create a network of ties among the notables of the province which could be mobilized for political purposes.

It is also important in the Algerian case to look at the question of generation, for different generations of Muslim scholars found themselves faced with strikingly different political situations, and educational and career opportunities.[7] The years of close interaction between state and religious leaders, and expansion of the religious establishment, in the 1850s and 1860s, and again in the late 1890s and early 1900s, were auspicious times to launch careers, though of different sorts. Al-Makki Ben Badis was doubtless the most outstanding representative of the Second Empire qadis, Qaddur Ben Ghabrit of the generation of imperial expansion. Those who fell in the troughs of the 1880s or the 1910s had to orient their ambitions in other directions. Al-Makki's son, Hamida, turned his to secular politics. His grandson, 'Abd al-Hamid, turned his to educational and religious activity independent of the state.[8]

The second aspect of the strong articulation between religious leaders and the colonial state in Algeria—strict subordination—can be usefully contrasted with the case of Palestine under British rule in the 1920s and 1930s. In Palestine, as in Algeria, the Muslims had restricted access to political power, as a result of an influx of settlers from Europe with whom they competed for control of land. There was a tendency for both the British and the French to manage alliances with the Muslim notables in religious terms. But the ways in which they did this were quite different.

In Algeria, the Islamic establishment was carefully integrated to

[7] Allan Christelow, "Intellectual History in a Culture Under Siege: Algerian Thought in the Last Half of the Nineteenth Century," *Middle Eastern Studies*, 18 (1982), pp. 387-399.

[8] Ali Merad, *Le réformisme musulman en Algérie de 1925 à 1940: essai d'histoire religieuse et sociale*, Paris, 1972.

the colonial state over a long period of time and subordinated to the control of French personnel. The French began with the seizure of the religious endowments in 1844. Although they experimented in allowing Muslim institutions a degree of autonomy, with the majlis system in the 1850s and with creating Muslim institutions at the national level in the form of legal advisory councils, these experiments did not last long, for they could not survive the charge that they constituted threats to the sacred indivisibility of sovereignty.

In the process of the development of this tightly controlled, centralized Islamic establishment, there emerged a religious-administrative elite, part of a wider class of urban notables, whose power and wealth depended to a large extent on their alliance with the state, and who often acquired a dual French and Muslim culture and a sophistication in the ways of French politics and administration. One could find in the same families qadis, French-trained medical doctors and lawyers, military officers, and civil servants.[9]

By contrast, the Supreme Muslim Council in Palestine under the British mandate had a good deal of autonomy and a good deal of wealth at its disposal, in the form of income from the religious endowments.[10] This gave al-Hajj Amin al-Husayni, as head of the Supreme Muslim Council, the ability to defy the British by setting in motion forms of protest and non-cooperation which were in many respects traditional ones, and which recall Laroui's observation on Morocco that, while the 'ulama had power on their own, there were clear limits to it.[11]

The traditional power of the 'ulama lay in their ability to mobilize popular protests to pressure a ruler into revoking an action which did not conform, in their view, to Islamic principle. Such protests did not bring into question so much who exercised political authority as how it was exercised. The 'ulama's ability to arouse popular protests could be effective within the framework of a traditional Muslim state, such as Morocco, or Iran at the end of the nineteenth century.[12]

[9] Gilbert Meynier, *L'Algérie révélee*, Paris, 1981.

[10] Joel S. Migdal, "Direct Contact with the West," in *Palestinian Society and Politics*, Princeton, 1980, pp. 20-31; and Yehoshua Porath, *The Emergence of the Palestine-Arab National Movement, 1918-1929*, London, 1974.

[11] Abdallah Laroui, *Les origines sociales et culturelles du nationalisme marocain (1830-1912)*, Paris, 1980, p. 103.

[12] On Morocco in the nineteenth and early twentieth century, see Laroui, *Les origines*, Chapter 9; Edmund Burke III, *Prelude to Protectorate*, Chicago, 1976, and "The Moroccan 'Ulama, 1860-1912, an Introduction," in *Scholars, Saints, and Sufis*, ed. Nikki Keddie, Berkeley, 1972. On Iran, see Hamid Algar, *Religion and State in Iran, 1785-1906*, Berkeley, 1969; and Nikki Keddie, *Religion and Rebellion in Iran: The Tobacco Protest of 1891-1892*, London, 1966.

But, in the colonial setting, such protests could only be effective in securing toleration of Islam, especially in the judicial and educational spheres, as one could argue occurred with the Algerian protests of the late 1880s.[13] Beyond this, protest was of little avail. One had either to emigrate to a Muslim land, as did a number of Tunisian and Algerian 'ulama shortly before World War I, or one had to organize to contest for political power and, at the same time, to wrest religious authority from the control of the colonial state.

In Palestine the large-scale protests of the late 1930s proved to be of no avail in the end. The patron-client ties which gave al-Hajj Amin al-Husayni his base were inadequate to the task of contesting the power of the modern state, and new political organizations had not yet fully emerged. As a result, the repression of the protests led to a disagregation of Palestinian leadership, which would hamper effective mobilization in the critical years of the 1940s.[14]

Algerians who exercised authority under the aegis of the colonial state learned very well that they had to walk a fine line, or else to confront the difficulties of working outside the system. The position of the Ben Badis family in Constantine was in certain respects similar to that of the Husaynis in Jerusalem as a highly influential notable family. But 'Abd al-Hamid Ben Badis' position as a leader of an association of religious leaders and educators independent of the colonial state, working out alliances with political parties in a broad national movement, and challenging the colonial state's manipulation of religious symbols and exploitation of biddable religious leaders, was a position quite different from that of al-Husayni. Ben Badis' strategy reflected the conclusions of an earlier generation of leaders in Algeria about the feasibility of behaving as if the modern colonial state were simply a traditional state in alien clothing. The bureaucratization of the Algerian Islamic establishment, to be sure, turned a good number of Muslim scholars into spiritless functionaries, but it imparted to others a substantial degree of political realism.[15]

[13] One could extend this point to cover a great deal of the movement of re-Islamization in the 1970s and 1980s, which is concerned above all with educational and legal questions, rather than with constitutional ones—with the notable exception of Iran. For a survey, see John O. Voll, *Islam: Continuity and Change in the Modern World*, Boulder, Colo., 1982.

[14] Ann Mosely Lesch, "The Palestine Arab National Movement Under the Mandate," in William Quandt et al., *The Politics of Palestinian Nationalism*, Berkeley, 1973, pp. 7-42.

[15] Bilqasim Sa'adallah, *Al-haraka al-wataniyya al-jazairiyya, 1930-1945* (The Algerian National Movement), Cairo, 1975; and 'Abd al-Karim Bu Safsaf, *Jami'a al-'ulama al-jazairiyya wa dawruha fi tatawwur al-haraka al-wataniyya* (The Association of Algerian 'Ulama and Its' Role in the National Movement), Algiers, 1981.

Finally, we can consider the internal articulation and the unification of the Algerian Islamic establishment under the direct control of the colonial state. There is a striking contrast between this and Northern Nigeria, which covered the territory of two strongly Muslim traditional states, the Sokoto Caliphate and the Sultanate of Bornu. It is often taken as a model case of indirect rule, while Algeria is taken as one of direct rule.

In Northern Nigeria, until the 1940s, the British intervened little in the affairs of Islamic law at any level, leaving serious criminal cases and property disputes in the hands of the traditional rulers, the emirs, and leaving the appointment of judges up to them as well. When the British did make demands of the Muslim judges—from the keeping of record books to the enforcement of motor traffic ordinances—they usually found that the judges, under the leadership of emirate officials, were capable of adjusting and accommodating to change. The British made modest efforts to promote higher level Islamic education, under the modernizing tutelage of the colonial state, by establishing a law school in Kano under the direction of Sudanese teachers educated at al-Azhar. But the controlling hand in judicial affairs remained that of the traditional rulers, and Islamic religious education remained outside the orbit of the colonial state, closely tied to traditional political structures and to communities.[16]

Yet this non-intervention was in a sense only de facto, for the Native Courts Ordinance of 1933 had established a channel of appeal from the Native Courts, as they were called, up to the West African Court of Appeal. It was only when the Court of Appeal, in 1947, reversed the judgment of an emir in a murder case that the colonial state's ability and intention to intervene in legal affairs became apparent. It was a deep shock to the Northern traditional rulers, for they had the sense, first, that their own prestige had suffered a serious blow and, second, that the North, with little modern education and practically no modern legal education, had been left culturally defenseless before a prospective onslaught of English-trained Southern lawyers. At the same time, in the South, which was far better developed educationally, political leaders were protesting bitterly that the British were exploiting the legal issue to prolong their rule.

The reaction to this situation on the part of the British authorities was to attempt a sort of transfusion of experience to Northern Nigeria from Pakistan and the Sudan, two former British-ruled terri-

[16] John Paden, *Religion and Political Culture in Kano*, Berkeley, 1973. These observations are also based on my own research in Nigeria.

tories with an experience similar to that of Algeria in the development of a centralized Islamic legal system. They also, as it were, parachuted in "liberal legal Orientalists" (J.N.D. Anderson and Joseph Schacht and, at a later date, Noel Coulson), a breed which the Nigerian system had failed to produce up to then, for the quite simple reason that they were not needed.[17]

The effects of this lag in the development of a centralized, rationalized Islamic judicial system, and the lack of a unified Islamic establishment, are apparent in a number of ways. On the one hand, Northern Nigerian Islam has retained a great sense of traditional vitality, of being interwoven with the fabric of community life. And "qadi justice" still flourishes in the area courts, not archaic and not modern, but evolving in its own fashion in response to complex forces of change. But, on the other hand, there is a latent sense of uneasiness over the relationship of Islam to the modern state, especially now that traditional political structures are fading in importance.

One response is that of a secular left, who point to how Islamic offices, especially that of judge, have long been tied closely to traditional aristocratic authority structures, and thus argue that religion should be separated from the domain of politics. This is a position strikingly similar to that of the European left, who identify religion with conservative, aristocratic forces. Yet Islamic political ideals in Northern Nigeria are still a potent force, embedded in memories of the Islamic revolution led by Uthman Dan Fodio in the early nineteenth century.[18]

In Algeria, Islam has long been separated from traditional political structures, and integrated to that of the modern state, a process which began with the decree on Muslim justice of 1854. The fact that the centralized Islamic establishment was unpopular should not distract one from the fact that it was the product of a large-scale transformation, a transformation which could not be reversed by the maraboutic and aristocratic pageantry concocted by the Native Affairs Department in the 1930s.

The independent modern state and Islam are closely intertwined in Algeria, where a modernist Islamic reformism, which has a striking resemblance to the protestant ethic, is enshrined as the official creed.

[17] E. A. Keay and S. S. Richardson, *The Native and Customary Courts of Nigeria*, London, 1966.

[18] Murray Last, *The Sokoto Caliphate*, London, 1968.

Yet there is a sense of uneasiness about the bureaucratic remoteness of this reformist Islam from day-to-day life.

As different as are all of these cases—Algeria, Senegal, Tunisia, Palestine, and Northern Nigeria—there is a common thread running through them. The Muslim scholars could not act as a check to the arbitrary use of authority by the colonial state, as had been their role in the traditional state under a Muslim ruler. Under the modern colonial state, Islamic law, of which they were the guardians, was consigned to being the law of social relations within communities folding in on themselves before the impact of the colonial state and the capitalist economy. With Islamic law so confined, and with its validity tolerated, and no more, by public opinion in the colonizing country, it could not serve as a vehicle of protest and change. And it even became dependent on the colonial state for protection against the incursions of the European legal system on its domain. This was the case whether the Muslim courts were thoroughly transformed at an early stage, as they were in Algeria, or for a long time left to their own devices, as they were in Northern Nigeria.

This points to a crucial dilemma for Islam in the postcolonial age. Can it overcome the colonial heritage and be revitalized to create an Islamic constitutional system? Or have the foundations for such a system been so thoroughly eroded that any attempt at such revitalization is destined to wind up as one more exercise in the sacralization of the authority of the bureaucratic state, not the reversal of the colonial development process but its logical culmination?

BIOGRAPHICAL NOTES

The following notes cover the most important individuals and families in the Muslim courts and the médersas, mainly in the period from 1850 to 1900. Their purpose is to help the reader to keep track of who is who, and to point out family relationships.

PROVINCE OF ALGIERS

Ben Brihmat, Hasan. Born ca. 1820. Qadi of Blida in 1853. From 1856 on: Director of Médersa of Algiers, served on Conseil de Jurisprudence Musulmane, Conseil Supérieur de Droit Musulman, and Conseil Général of Algiers.

Ben Brihmat, Hamdan. Brother of Hasan. Studied at Médersa of Algiers. Served on courts in region of Miliana, beginning 1864.

Ben Brihmat, 'Umar. Son of Hasan. One of the first Algerians to study French law. Author of *Marsad fi masail al-iqtisad* (Observation of Economic Problems) with 'Abd al-Qadir al-Majjawi, and of *Najh fi-l-fiqh al-fransawi* (Success in French Law). Died 1909.

Ben al-Hajj Hamou. Prominent judicial family in Miliana.

Ben al-Hajj Musa, 'Ali Ben Ahmad. Born ca. 1833, Algiers. Qadi in Tenès, Tlemcen, Miliana, 1860s, then retired to contemplative and scholarly life. Wrote well-known study on Sidi Ahmad Ben Yusuf, patron saint of Miliana. Died 1913.

Bu Hella, 'Ali. From old scholarly family of Médéa. Served as qadi and majlis president in Médéa. Revoked for corruption in 1865.

Bu Izar or Buzar. Prominent judicial family in Miliana.

Maziri, Mhammed Ben 'Abd al-Qadir. From old 'ulama family of Médéa. Studied in Mazouna. Served on courts in Médéa region, 1850-1885. Wealthy and highly regarded.

Ben Mhammed, Shaikh al-Misum. Prominent shaikh of the Darqawa brotherhood. Studied at Mazouna. Father was qadi early in colonial period. Founded Zawiya Boghari in 1865. Offered directorship of the Médersa of Algiers by the French, but he declined. Died 1883.

Bu Qandura, Ahmad. Long-time mufti of Algiers, Muslim Assessor on Court of Algiers from 1850s to 1880s.

Bu Qandura, Muhammad Ben Ahmad. Succeeded his father as mufti of Algiers. Opposed conscription in 1911.

Ben Sayah. Important judicial family in Orléansville region.

Ben Turquia, Qaddur Ben Muhammad. Born ca. 1800. Wealthy merchant in Algiers. Muslim Assessor on Court of Algiers, 1834-186?.

Ben Tuquia, Hamu Ben Qaddur. Muslim Assessor on Tribunal of Philippeville, 1868-1870, qadi of Algiers, 1870-1883. Married to daughter of Ahmad Ben Brihmat.

PROVINCE OF ORAN

Ben 'Abdallah, Ahmad. Born ca. 1817. From religious family in tribe Ouhalca Gharba, relative of Bu Hammadi, the khalifa of the Amir 'Abd al-Qadir. Family very influential in the Trara region. Studied in Tlemcen and Fez. Qadi of Tlemcen, 1856-1879. By the time he retired, he was so debt-ridden that his judicial salary had been attached by the courts.

Ben 'Abdallah, Hanafi. Long-time khuja of the Bureau Arabe in Mascara. Served as shahid on majlis, 1853-1856. Muslim Assessor on Tribunal of Mascara, 1881-1886, qadi of Mascara from 1886 to his death in 1892. Served on Conseil Général of Oran. Son Ahmad attended Médersa of Tlemcen; son Muhammad attended Lycée of Algiers.

Ben 'Ali, Hassan. Born ca. 1842. From Awlad Sidi Qada Ben Mukhtar, relative of the Amir. Studied at Kalâa and Fez. Served on courts in the Mascara region, beginning 1862. In 1873 his nomination as qadi of El Bordj was seriously opposed by the agha, who feared his independent influence.

Ben 'Amr, Tahar. Born ca. 1814. From Awlad Sidi Muhammad Ben 'Amr. Bureau Arabe qadi of Mascara in early 1850s. Failed to revive his career after revocation in majlis scandal of 1858.

Ben al-Badawi, Daho. From Awlad Sidi Daho. Shahid on Mascara majlis, 1853-1856. Qadi of Awlad Sidi Daho, 1856-1864. Transferred to town of Mascara as bash 'adil in 1864, so that his son could learn French. Qadi of Mascara, 1866-1874, then mufti and member of consultative majlis.

Ben al-Badawi, 'Abd al-Qadir Ben Daho. Served on Muslim courts in Oranais, beginning 1874.

Ben Barnu, Muhammad al-'Ayashi. Born ca. 1826. Mufti of Mostaganem, 1850s and 1860s. Member of Conseil de Jurisprudence Musulmane and Gastambide Commission.

Ben al-Hajj al-Azail, Ahmad. Born ca. 1833. From Beni Snouss on Moroccan frontier, wealthy and influential religious family. Served on courts in Nemours from 1850s through 1890s.

Ben al-Hajj al-Azail, Bashir. Born ca. 1838. Served in Nemours region from 1860s through 1890s.

Bel Haoua. Religious family originally from the Eghris Plain. Descended from Sidi 'Abdallah Ben Ahmad, a sixteenth-century saint. Family moved to Mekahlia near Mostaganem ca. 1700. Several family members held important judicial posts under the Ottomans. Closely associated with the Agha Sidi Larribi and came over to the French with him in 1840s. Eleven members of this family served in the courts in the Mostaganem region between 1856 and 1892.

Ben Jilali Ben Rukash, 'Abd al-Qadir. From Awlad 'Abad. Went on hijra to Morocco with the Amir. Shahid on majlis of Mascara, 1853-1856. Qadi of Kalâa, then Mascara, 1856-1866. Father was qadi of the bait al-mal under Turks, an uncle qadi of Oran, and another uncle khuja of the Amir.

Ben Jilali Ben Rukash, al-Habib. Studied at Mascara and Fez. Qadi of Mascara, 1870-1873, revoked because he was too young and quick-tempered. Later became muqaddam of the Darqawa brotherhood.

al-Kalawi, Muhammad Ben Muhammad. Born ca. 1824. From Awlad Sidi 'Amar Ben Zerram, near Kalâa. Served as qadi of Mascara, 1860-1863, and 1873-1874, but personality not forceful enough to serve as judge. In 1863 established school to teach law in Mascara (winter) and El Bordj (summer), which was highly praised by the Orientalist Perron.

al-Khubzawi, Muhammad. From Hazedj, near Sidi Bel Abbès. Served on courts in Mascara and Tlemcen regions from 1870s through 1890s, and on Conseil Supérieur de Droit Musulman.

Manwar, 'Abd al-Rahman Walid Bu Madian. Born ca. 1850. Descended from Sidi 'Ali Ben Yub. Studied at Médersa of Tlemcen, taught at École Arabe-Française for one year (1873), then entered judiciary, served as qadi in Algiers and Mostaganem, on Conseil Général of Oran. One of the most prominent qadis of the late nineteenth century, decorated by France, Tunisia, Sweden.

Ben Muhammad Lekhal, Ahmad. From Mecharef fraction of Zoua tribe. Father was muadhdhin of Mascara mosque, died in 1850. Studied at Mascara and Fez. Served on courts in Mascara region, 1850s and 1860s, taught school in Zoua.

Ben Mukhtar Ben al-Bashir, Tayib. Relative of the Amir and often in communication with him. On majlis of Mascara, late 1850s, qadi in Mascara region until retirement in 1881, on Gastambide Commission.

Ben Mukhtar Ben al-Bashir, Muhammad al-Saghir. Brother of Tayib, served on courts in Mascara region until retirement in 1881. Went to Marseille, 1865, to see Amir. Married to Yamina Bint Bu Talib.

Bel Qaid, Muhammad. Born ca. 1803. Qadi of Oran, revoked in majlis scandal of 1858.

Ben Qaid 'Umar, Hamida. Born ca. 1823. Grandson of last bey of Oran. Mufti of Oran, 1854-1858. Revoked in majlis scandal.

Ben Rahhal, Hamza. Qadi of Nemours until 1860, then became qaid of Nédroma and Trara. Served on Gastambide Commission.

Ben Rahhal, 'Abid al-'Abbas. Born ca. 1825. Studied in Fez and Tlemcen. Served on courts in Nemours region, 1846-1876.

Ben Rahhal, Mustafa Walid al-'Abbas. Born ca. 1847. Studied in Nédroma and Fez. Served on courts, beginning 1873.

Ben Rahhal, Bu Madian Walid Hamza. Born ca. 1847 Studied in Fez. Served on courts, beginning 1872.

Ben Rahhal, Mhammed Walid Hamza. Briefly qaid of Nédroma and Trara

in 1880s, then withdrew to private life. Leading spokesman of Algerian Muslims in Islamic educational affairs in 1890s, early 1900s. Served on Délégations Financières. Became proponent of Darqawa brotherhood.

Sha'ib (or Choaib) Ben 'Abdallah. Born ca. 1835. From wealthy religious family of El Fehoul. Studied at the Médersa of Tlemcen. Imam at Mosque of Sidi Bu Madian, 1865-1869. Qadi of Tlemcen from 1869.

Ben Sha'ib, Abu Bakr 'Abd al-Salam. Professor at Médersa of Tlemcen.

Ben Thabit, Mawlay Idris. Born ca. 1837. Studied at Fez and Wargla. Served on courts 1869-1874, then imam of Sidi Haluzi mosque.

Ben Thabit, Muhammad Ben Mawlay Idris. Born ca. 1855. Studied at Fez and Médersa of Tlemcen. Served on courts in Oranais and Algerois, beginning 1877.

Ben Thabit, Muhammad Ben Muhammad. Nephew of Mawlay Idris. Father died studying in Cairo. Studied at Wargla and Médersa of Tlemcen. Professor at Médersa of Tlemcen.

Ben Zarruqi, Muhammad. Born ca. 1814. Descendant of Sidi Mansur of Mazaghran. Served as khuja and qadi for Bureau Arabe of Tlemcen. Major figure in majlis crisis of 1859.

Ben al-Bu Zidi. Religious family of Dahra region, linked to Khalifa Sidi Larribi. Several members of family served on courts in Mostaganem region.

Province of Constantine

al-'Antari, Muhammad. Served as intermediary between Hajj Ahmad Bey and the French in 1830s. Killed on orders of Bey because he was suspected of betrayal.

al-'Antari, Salah Ben Muhammad. First khuja of Bureau Arabe in Constantine. Wrote history of Constantine under the Turks.

al-'Antari, Mustafa Ben Salah. Served on Muslim courts in Constantinois from 1879.

Bel 'Arbi. Family descended from Sidi Mbarik Ben Kablut, zawiya at Ain Agroun, near Nador. Numerous members served on courts, mostly in the region of Bône.

Ben 'Azuz, Muhammad. From prominent religious family of Mila. On majlis of Constantine, 1849-1860. Maliki mufti, 1853-1864.

Ben Badis, al-Makki. Born ca. 1820. Qadi of Constantine, 1856-1876, Muslim Assessor on Tribunal of Constantine, served on Conseil Général, Gastambide Commission. Most important Muslim political spokesman in Constantine in 1860s and 1870s. Grandfather of 'Abd al-Hamid, founder of the Association of Reformist 'Ulama.

Ben Badis, Hamida Ben al-Makki. Assumed father's position on Conseil Général in 1881. An early "Jeune Algérien."

Ben Badis, Sharif Ben al-Makki. Born ca. 1840. Served on courts in Constantine, 1856-1893, retired to manage farms in Wad Athmania.

Ben Baghrich. Religious family of Collo region, descended from Sidi Mbarik

Ben Mawlay Yaqub al-Mansur, son of a Moroccan sultan. Several members served on courts in Constantinois.

Darraji, Hamu Ben Ahmad. Originally from city of Constantine. Served, beginning 1874, in Constantinois and Algiers.

Ben Fiala, Ahmad. Born ca. 1831. From El Milia. Served as qadi 1861-1867. Brother was leader of 1871 rebellion. Muqaddam of Rahmaniyya. Died 1903.

Ben al-Hajj Tayib. Religious family of Beni Yala near Sétif, linked to Qaid Ben Habylès. Several members served on courts in Sétif region.

Ben Husain al-Kolli. Religious family of Collo, ancestor buried by mosque of Collo. Several members served on courts in Constantinois.

Ben Khadim Allah. Religious family of Djidjelli region, originally from Beni Foughal. Sa'id Ben Husain was revoked from position of qadi for role in 1871 rebellion. Several other family members served on courts.

al-Kolli, Ahmad. Originally from Collo, settled in Beni Oughlis near Bougie. Qadi of Bougie until 1869, stricken by paralysis.

Ben Larguech, Muhammad. Qadi of Bône in 1850s. Served on Conseil de Jurisprudence Musulmane. Muslim Assessor at Tribunal of Bône from 1857.

Ben Lefgoun. Prominent family of Constantine. Held post of shaikh al-islam under Ottomans. Except for 'Abd al-Halim, in the 1870s, had little role in the judiciary.

Majjawi, 'Abd al-Qadir. From a learned family of Tlemcen. Grew up in exile in Morocco. Taught in Constantine, beginning 1870, first in independent school, later at médersa. Earliest exponent of Islamic modernism in Algeria. Tied by marriage to the Ben 'Abd al-Qadir Bu Talibs. Died 1913.

Ben Majub, 'Ali. From religious family of Bled Guerfa, near Guelma. Muqaddam of Rahmaniyya. Arrested and interned for rebellion in 1852. Qadi near Guelma from 1861 to his death in 1870.

Ben Merad, Ahmad. Born ca. 1811. From prominent religious family of Jabal Edough, near Bône. Muqaddam of Rahmaniyya. Qadi in Bône region, 1860-1877, then mufti of Bône.

al-Mubarik, Hajj Ahmad. Born ca. 1790. From Beni Attar near Mila. After studies, commercial travels, and pilgrimage, settled in Constantine to be teacher, mufti, majlis member. Wrote history of Constantine. Muqaddam of Hansaliyya.

Ben al-Muhub, Sa'id. From Beni Bezaz in Babor. Served as qadi at several posts in Constantinois from 1856 until his assassination by an irate litigant in 1875.

Ben al-Muhub, Muhammad al-Mulud. Student of 'Abd al-Qadir al-Majjawi. Mufti of Constantine from 1890s to 1930s. Prominent advocate of Islamic reformism in pre-World War I period. Began bitter quarrel with 'Abd al-Hamid Ben Badis in 1912, which continued the rest of his life.

Ben Musbah. Important religious family of Beni Yala. Several members served on courts, mainly in the Sétif region.

Ben Sassy, Sulaiman. From prominent Bônois family. Expelled to Tunisia after 1852 rebellion.

Ben Sassy, Salah. Qadi in Philippeville and Constantine from 1840s to 1864. Linked to Bu 'Akkaz.

Ben Sassy, Allawa Ben Salah. Secretary at parquet of Constantine, 1864-1868. Muslim Assessor, 1868-1877. Then had long career as qadi. Prominent figure in Guelma conspiracy of 1881.

Shadhli, Muhammad. Born ca. 1808, near Tolga. Family resettled in Ferdjioua. Qadi of Bureau Arabe in Constantine, closely tied to Captain Boissonet. Served as companion to 'Abd al-Qadir at Amboise. Director of Médersa of Constantine from 1850 to his death in 1877.

Shadhli, Muhammad Ben Muhammad. Born ca. 1835. Briefly qadi of Sétif, 1854, revoked in bribery affair. Professor, then Director, then Honorary Director, of Médersa of Constantine. Died 1905.

Ben Shettah al-'Amri, Sa'id Ben Muhammad. One of the first students at the Médersa of Constantine in early 1850s. From Ameur tribe near Sétif. Served as qadi in numerous localities. Prominent figure in Guelma conspiracy of 1881. Resigned a few years later, bitterly anti-French. Involved in alleged plan to emigrate with Ben Badis family in 1889.

Bu Talib. Family descended from a paternal uncle of the Amir 'Abd al-Qadir.

Bu Talib, Ahmad. Served as qadi of Sétif, 1854-1863. Resigned and went to settle in Damascus.

Bu Talib, 'Abd Allah Ben Ahmad. Served on courts, beginning in 1871. Married a niece of Amir in Damascus.

Bu Talib, Muhammad Ben Ahmad. Served on courts, 1856-1861. By late 1860s was serving as an imam of a Damascus mosque.

Bu Talib, Mukhtar, and Mahi al-Din Ben Muhammad Ben Ahmad. Sons of Muhammad by his first wife, remained in Algeria, began serving on Muslim courts in 1880s.

Bu Talib, 'Ali Ben Ahmad. One-time Tirailleur Indigène. Notorious eccentric.

Bu Talib, Milud. Ahmad Bu Talib's brother. Qadi of Bordj Bou Arreridj, 1857-1864. Resigned and went to settle in Damascus.

Bu Talib, Muhammad Ben Milud. Served briefly as 'adil. Accompanied father to Damascus in 1864.

Bu Talib, 'Abd al-Qadir. Darqawa leader in 1830s and 1840s, opposed to the Amir.

Bu Talib, Muhammad Ben 'Abd al-Qadir. Served on courts in Constantinois, 1860-1868, revoked.

Bu Talib, Ahmad al-Khadir Ben 'Abd al-Qadir. Served on courts, 1856-1898. Qadi of Sétif (1863-1876), Oran (1876-1881), Constantine (1881-1885), and Tébessa (1885-1898). Died at Tébessa in 1898.

Bu Talib, Mustafa Ben 'Abd al-Qadir. Served in all three provinces from 1858 to revocation in 1883.

Bu Talib, Ahmad al-Mujahid Ben Muhammad Ben 'Abd al-Qadir. Studied in Damascus, early 1860s. From 1864, served as qadi in Sétif and Oranais. Died at Sétif, 1890.

Bu Talib, Zin al-'Abidin Ben Muhammad Ben 'Abd al-Qadir. Served in Sétif and Mascara regions from 1873.

Bu Talib, Abu Bakr Ben Ahmad al-Mujahid Ben Muhammad Ben 'Abd al-Qadir. Qadi in numerous locations, including, in early twentieth century, the city of Algiers. In 1900 wrote *Rawdat al-akhbar wa nuzhat al-afkar*, a sort of Algerian counterpart to Doutté's *L'Islam Algérien en l'an 1900*. His brothers Mahi al-Din and Muhammad al-Mamun also served on the courts.

Ben Yusuf. Prominent religious family of the La Calle region. Originally from Beni Muzzeline.

Ben Wataf. Prominent family of the city of Constantine. Members held both religious and judicial posts. Important in city politics and Tijaniyya brotherhood.

Ben Zaghuda, al-Hajj Muhammad. From a prominent Constantine family closely tied to the Ottoman beylik. Married to a daughter of Bu 'Akkaz. Qadi in Philippeville and Algiers, 1850s and 1860s. Member of Gastambide Commision.

Bu Ziri. Prominent religious family of Souk Ahras region, descended from Sidi Masa'ud Bu Bakr, closely tied to the chiefly family of Ben Resgui.

ARCHIVAL SOURCES

ARCHIVES D'OUTRE-MER, AIX-EN-PROVENCE

A. Series F80
   Bureaux Arabes Militaires—Periodic Reports
      F80 472-476 Algiers, 1854-1857
      F80 489-491 Oran, 1854-1857
      F80 502-506 Constantine, 1854-1857
   Bureaux Arabes Départementaux—Periodic Reports
      F80 507 Constantine, 1849-1851
      F80 508 Constantine, 1852-1854
      F80 509 Constantine, 1855-1857
      F80 510 Algiers, Oran, Constantine, 1847
      F80 511 Algiers, Oran, 1849-1854
      F80 512 Oran, 1846-1856
      F80 513 Oran, 1849-1854
      F80 514 Algiers, 1849-1852
      F80 515 Algiers, 1853-1854
      F80 516 Algiers, 1855
      F80 517 Algiers, 1856
      F80 518 Oran, 1853-1855
      F80 519 Oran, 1855-1857
      F80 520 Constantine, 1857-1858
   Assorted topical reports and documents
      F80 1087 Établissements religieuses réunies à la Domaine
      F80 1621-1624 Justice Musulmane, 1834-1858
      F80 1678 Évènements Politiques, 1859-1864
      F80 1679 Évènements Politiques, 1830-1865
      F80 1680 Évènements Politiques, 1866-1868
      F80 1725 Droit musulman, tribunaux musulmans
      F80 1726 Affaires diverses, 1867-1907
      F80 2013 Register of judicial nominations, 1856-1860
B. Series H (Archives of the Government-General)
      1 H 30 Affaires politiques diverses, 1870s
      6 H 33 Personnalités influentes, Bône
      7H 22 L'Émir Abdel Kader et ses parents
      9 H 4 Surveillance politique des indigènes, 1890s
      9 H 13 Surveillance politique, Constantine, 1880s
      10 H 13-15 History of the Bônois
      10 H 61 Exposé de la situation, 1880

10 H 79 Chefs indigènes—Miliana, Orléansville
16 H Renseignements sur les notables musulmans, 1898
17 H 1-8 Justice musulmane

C. Archives of the Provincial Military Administration

Province of Algiers

Subdivision of Médéa

50 II 70-73 Correspondence, 1868-1872
50 II 254-256 Periodic Reports, 1863-1877
71 I 11 Justice musulmane, personnel

Subdivision of Miliana

60 II 13-19 Correspondence, 1863-1870
60 II 21-24 Correspondence, 1857-1861

Cercle of Miliana

62 II 13 Periodic Reports, 1861-1866

Cercle of Cherchell

61 II 15-16 Periodic Reports, 1860-1871
61 II 2 Correspondence, 1863-1865
61 II 4 Correspondence, 1866-1867

Subdivision of Orléansville

70 II 30 Correspondence, 1862-1865
70 II 34 Correspondence, 1873-1874
103 I 2 Annual Reports, 1857-1868
103 I 8 Periodic Reports, 1854-1875

Cercle of Orléansville

72 II 25 Register of Bureau Arabe Qadi

Province of Oran

Division of Oran

1 JJ 10-12 Correspondence, 1853-1860
1 JJ 14-20 Correspondence, 1862-1873
1 JJ 22-24 Correspondence, 1873-1875
1 JJ 190 Correspondence with diverse authorities, 1854-1858

Subdivision of Mascara

1 J 21-25 Justice musulmane, personnel, 1849-1888
30 JJ 124-138 Correspondence, 1852-1870
30 JJ 295 Arabic Correspondence, 1853-1856
30 JJ 335 Register of Bureau Arabe Qadi, 1853-1856
30 JJ 336 Register of Qadi of Frenda, 1868-1874
30 JJ 370 Commission Consultative, 1847-1857

Cercle of Mascara

34 JJ 25 Chefs indigènes et personnel de la justice musulmane
34 JJ 35 Hakouma Register, 1863-1865
24 J 8 Periodic Reports, 1856-1884

24 J 10 Annual Reports, 1854-1884
Cercle of Tiaret
26 J 8 Periodic Reports, 1851-1893
26 J 10 Annual Reports, 1854-1886
Cercle of Saida
25 J 8 Periodic Reports, 1856-1893
25 J 10 Annual Reports, 1854-1892
Subdivision of Mostaganem
40 JJ 6-9 Correspondence, 1852-1864
40 JJ 11-13 Correspondence, 1865-1873
32 J 4 Periodic Reports, 1854-1883
Cercle of Ammi Moussa
31 J 2-3 Periodic Reports, 1856-1873
Subdivision of Tlemcen
1 JJ 55 Judicial Personnel, 1849-1883
Cercle of Nemours
63 J 6 Periodic Reports, 1855-1880
63 J 2 Judicial Organization, 1875-1880
Cercle of Lalla Maghnia
62 J 9 Periodic Reports, 1856-1893
62 J 11 Annual Reports, 1855-1895
Subdivision of Sidi Bel Abbès
60 JJ 60 Correspondence, 1859
60 JJ 12-13 Correspondence, 1856-1860
Cercle of Sidi Bel Abbès
61 JJ 1 Hakouma Register, 1858
Province of Constantine
Division of Constantine
1 KK 17-61 Correspondence, 1851-1883
1 KK 165 Correspondence with Subdivision of Bône, 1880-1885
1 KK 291 Correspondence with diverse authorities, 1863
1 KK 294-303 Correspondence with diverse authorities, 1866-1884
Subdivision of Constantine
30 KK 10-25 Correspondence, 1858-1873
30 KK 126 Hakouma Register, 1859-1861
Cercle of Djidjelli
33 KK 15-28 Correspondence, 1859-1879
33 KK 39 Arabic Correspondence, 1868-1873
33 KK 50-52 Periodic Reports, 1850-1871
33 KK 53 Annual Reports, 1861-1875
Subdivision of Bône
20 KK 33-54 Correspondence, 1852-1882

20 KK 146-147 Correspondence with diverse authorities, 1878-1884

Cercle of Guelma

22 KK 10 Correspondence, 1857-1858

22 KK 17-21 Correspondence, 1865-1876

22 KK 63 Senatus Consulte, Beni Muzzeline

Cercle of La Calle

23 KK 10-19 Correspondence, 1855-1873

Cercle of Souk Ahras

24 KK 50-52 Periodic Reports, 1853-1875

24 KK 45 Chefs et magistrats musulmans, 1883-1922

Subdivision of Sétif

40 KK 9-29 Correspondence, 1853-1875

40 KK 129-131 Correspondence with diverse authorities, 1864-1869

40 KK 157-159 Chefs et magistrats musulmans

Cercle of Bougie

43 KK 71 Periodic Reports, 1861-1868

Annexe of Takitount

46 KK 45 Periodic Reports, 1865-1868

Subdivision of Batna

10 KK 32-45 Correspondence, 1854-1873

10 KK 185 Annual Reports, 1858-1864

Cercle of Batna

12 KK 16 Periodic Reports, 1864-1875

D. Senatus Consulte Reports

The Senatus Consulte of 1863 laid the foundations for transforming collective tribal property into private property. In the process, each tribe was surveyed, and a report produced. These reports give brief historical sketches on a tribe, as well as economic, social, and demographic information of varying quality. Published versions of these reports can be found in the *Bulletin Officiel*, and in the *Mobacher*, the bilingual government newspaper. However, the archival files sometimes contain supplementary material, and they are more convenient to work with. I consulted reports on the following tribes:

Tribe	*Subdivision*	*Côte of File*
Ahl Eghris	Mascara	2 N 3
Beni Ahmed	Djidjelli	M 74
Beni Amran	Djidjelli	2 N 7
Beni Haoua	Orléansville	M 60
Beni Ider	Djidjelli	M 88
Beni Menasser	Miliana	M 59
Metchatchil	Mascara	M 66

Nador	Bône	M 83
Ouled Said	Mascara	M 67
Beni Salah	Djidjelli	2 N 6
Serraouia	Constantine	M 76
Ouled Sidi Daho	Mascara	M 67
Ouled Sidi Abdelli	Tlemcen	2 N 94

E. Diverse Series at Aix

Series S—Education

22 S 1 Médersa

24 S 1-2 Médersa

Series Q—Conseil de Guerre

These are reports of cases before a military tribunal. They were used in this study simply to investigate the qadi assassinations of 1864.

Deuxième Conseil de Guerre, Algiers, 1864

Series X

2 X 103 Collection Vaudouard

Series E

1 E 215 and 237 Documents concerning the Amir 'Abd al-Qadir in the 1840s and 1850s, during his confinement at Amboise and his exile in the East.

ARCHIVES DE LA MINISTÈRE DE LA GUERRE, VINCENNES:

H 270-273 Correspondence from Commandant, Division of Constantine to Governor General, 1851-1854

ARCHIVES DE LA MINISTÈRE DES AFFAIRES ÉTRANGÈRES, PARIS:

Consular Correspondence

Turquie	318 B-E	1854
Tunis	13-14	1853-1854
Damas	3-6	1853-1854

ARCHIVES NATIONALES, TUNIS:

Carton 78, Dossier 929	Correspondence of the Amir 'Abd al-Qadir with Tunisian officials
Carton 277 (Série A)	Algerians in Tunisia
Dossier 5	Surveillance of Algerians
Dossier 13	Legal status of Algerians living in Tunisia
Carton 278 (Série A)	Algerians in Tunisia
Dossier 6	Mokrani family
Dossier 7	Soufis (from Souf region, around El Oued)

Dossier 11	Mzabis
Dossier 22	Algerian habous legislation

Published Sources

Official Publications

Algeria

Bulletin officiel des actes du gouvernement (B.O.A.G.)

Contains all decrees, laws, and arrêtés; up to 1876, it contains all nominations and personnel changes for the Muslim courts, after which one must use the *Mobacher* or the *Moniteur de l'Algérie*

Conseils Généraux—Algiers, Oran, and Constantine

These provincial consultative assemblies held sessions once or twice a year, in October, and sometimes in the Spring. Records of proceedings and budgets are published.

Conseil Supérieur du Gouvernement

Sessions held once a year in November, with delegates from the conseils généraux.

France

Annuaire statistique de la France

Journal officiel; Débats and *Documents* of the Senate and Chamber of Deputies

These sources are all essential for following Algerian policy in the Metropole. The most essential documents of this study were:
Rapport Isaac sur la justice musulmane, la police et la sécurité, Annexe No. 36, 8 February 1893
Rapport Combes sur l'enseignement supérieur musulman, Annexe No. 15, 29 January 1894
(both in Sénat, *Documents*)

Newspapers

L'Africain (Constantine), 1864-1865
L'Akhbar (Algiers), 1864-1865
al-Basair (Paris), 1881 (in French and Arabic)
Le Courrier de Bône, 1880-1884
L'Indépendant de Constantine, 1868-1869, 1885-1889
Le Mobacher (government newspaper in French and Arabic)
Moniteur de l'Algérie (Algiers), 1882-1892 (semi-official)
al-Muntakhib (Constantine), 1882-1883 (in French and Arabic)
La République de Constantine, 1886-1888
Le Reveil de Mascara, 1881-1884
Le Temps (Paris)

N.B. The best collections of Algerian provincial newspapers in French are to be found in the archives of the wilayas of Algiers, Oran, and Constantine. Arabic newspapers from the early twentieth century are more easily found at the Bibliothèque Nationale in Paris. *Al-Muntakhib* is available only at the Arsénal Library in Paris.

Periodicals

Algeria

Bulletin de l'Académie d'Hippone (Bône)

Bulletin de l'Association des Magistrats et Officiers Ministériels Musulmans (Algiers), begins 1913, in French and Arabic

Bulletin judiciaire de l'Algérie (Algiers), 1877-1884

Bulletin de la Société de Géographie et d'Archéologie d'Oran

Bulletin de la Société Géographique d'Alger et d'Afrique du Nord

Journal de la Jurisprudence de la Cour d'Appel d'Alger

Recueil de notices et mémoires de la Société d'Archéologie, Géographie et Historie de Constantine (R.S.A.G.H.)

Revue Africaine (Algiers)

Revue algérienne et tunisienne de législation et de jurisprudence

France

Bulletin du Comité de l'Afrique Française

Journal Asiatique

Revue de l'Afrique Française

Revue du monde musulman

N.B. The above periodicals were used extensively for this study, and only the most important articles from them are cited in the bibliography.

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